

**REGULATIONS GOVERNING  
SPECIAL EDUCATION PROGRAMS  
FOR CHILDREN WITH DISABILITIES  
IN VIRGINIA**

Effective March 27, 2002

## FOREWARD

The reauthorization of the Individuals with Disabilities Education Act in 1997 prompted the need to revise Virginia's special education regulations. Input was received from school personnel, parents, consumers, professionals and the State Special Education Advisory Committee before and during the public comment period prescribed by Virginia's Administrative Process Act. Department of Education staff members are grateful to those persons who provided comment.

The regulations were adopted by the Board of Education on October 19, 2000 and became effective on January 1, 2001. Additional changes were made to the regulations in response to the United States Department of Education's review. These changes became effective March 27, 2002.

The regulations include reference to the federal regulations, state statute, or state regulations that serve as the source for the requirements. These references are found at the right margin.

Copies of these regulations, including braille copies, audio tapes, and large print versions are available at no cost from the Virginia Department of Education. Please forward your request to the Virginia Department of Education, P. O. Box 2120, Richmond, Virginia 23218-2120 or by calling (800) 422-2083.

## PREAMBLE

The Virginia Constitution delineates the General Assembly's responsibility for education: "The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth ..." (Article VII, Section 1). The Code of Virginia delineates the Commonwealth's responsibility for education of children with disabilities, as follows:

- ?? "The Board of Education shall prepare and supervise the implementation by each school division of a program of special education designed to train children with disabilities ..." (§22.1-214);
- ?? " 'Children with disabilities' means those persons who are aged two to twenty-one, inclusive ... are disabled as defined by the Board of Education, and ... need special education" (§22.1-213);
- ?? "Each state board, state agency and state institution having children in residence or in custody shall have responsibility for providing for the education and training to such children which is at least comparable to that which would be provided to such children in the public school system" (§22.1-7); and
- ?? "Each school division shall provide free and appropriate education, including special education, for the children with disabilities residing within its jurisdiction in accordance with the regulations of the Board of Education" (§22.1-215).

These regulations set forth the requirements of the Board of Education regarding the provision of special education and related services to children with disabilities in the Commonwealth, reflecting both state and federal requirements. The regulations are applicable to all local school divisions, state-operated programs, Virginia schools for the Deaf and the Blind, and private schools in the Commonwealth that provide special education and related services to children with disabilities.

In addition to these requirements, the following statutes and regulations are applicable to children with disabilities: all regulations promulgated by the Board of Education, provisions of the Code of Virginia (COV), the requirements of Section 504 of the Rehabilitation Act of 1973 (as amended), the Americans with Disabilities Act, the Education Department General Administrative Rules (for federal grant requirements), and the Virginians with Disabilities.

TABLE OF CONTENTS

Forward		2
Preamble		3
Part I	DEFINITIONS	6
	8 VAC 20-80-10	Definitions 6
Part II	RESPONSIBILITY OF STATE DEPARTMENT OF EDUCATION	18
	8 VAC 20-80-30	Functions of the Virginia Department of Education 18
Part III	RESPONSIBILITY OF LOCAL SCHOOL DIVISIONS AND STATE OPERATED PROGRAMS	23
	8 VAC 20-80-40	Responsibility of the local school divisions and state operated programs 23
	8 VAC 20-80-45	Special education staffing requirements 24
	8 VAC 20-80-50	Child find 28
	8 VAC 20-80-52	Referral for evaluation 30
	8 VAC 20-80-54	Evaluation 32
	8 VAC 20-80-56	Eligibility 35
	8 VAC 20-80-58	Termination of special education and related services 39
	8 VAC 20-80-60	Free appropriate public education 39
	8 VAC 20-80-62	Individualized education program 42
	8 VAC 20-80-64	Least restrictive environment and placements 49
	8 VAC 20-80-65	Placement of children at the Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton 50
	8 VAC 20-80-66	Private school placement 51
	8 VAC 20-80-68	Discipline procedures 56
	8 VAC 20-80-70	Procedural safeguards 61
	8 VAC 20-80-72	Transfer of rights to students who reach the age of majority 68
	8 VAC 20-80-74	Mediation 70
	8 VAC 20-80-76	Due process hearing 71
	8 VAC 20-80-78	Complaint procedures 82
	8 VAC 20-80-80	Surrogate parent procedures 84
	8 VAC 20-80-90	Local educational agency administration and governance 86
Part IV	FUNDING	89
	8 VAC 20-80-100	Eligibility for funding 89
	8 VAC 20-80-110	State funds for local school divisions 89
	8 VAC 20-80-120	Federal funds 90
	8 VAC 20-80-130	Funds to assist with the education of children with disabilities residing in state-operated programs 91

	8 VAC 20-80-140	Funding, withholding, and recovery of funds	92
	8 VAC 20-80-150	Appeal of administrative decision regarding funding	93
	8 VAC 20-80-152	Use of public and private insurance	93
	8 VAC 20-80-155	Attorneys' fees	94
Part V	ADDITIONAL RESPONSIBILITIES OF STATE BOARDS, AGENCIES, AND INSTITUTIONS FOR EDUCATION AND TRAINING OF CHILDREN WITH DISABILITIES IN RESIDENCE OR CUSTODY		96
	8 VAC 20-80-160	Additional responsibilities of state boards, agencies, and institutions for education and training of children with disabilities in residence or custody	96
Part VI	COMPLIANCE WITH § 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED		99
	8 VAC 20-80-190	Compliance with § 504 of the rehabilitation act of 1973, as amended	99
	APPENDIX A		100
	INDEX		102

## PART I. DEFINITIONS.

### 8 VAC 20-80-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Age of eligibility" means all eligible children with disabilities who have not graduated with a standard or advanced studies high school diploma who, because of such disabilities, are in need of special education and related services, and whose second birthday falls on or before September 30, and who have not reached their 22nd birthday on or before September 30 (two to 21, inclusive) in accordance with the Code of Virginia.

*COV §22.1-213; 34 CFR § 300.122 (a) (3) (ii)*

"Age of majority" means the age when the procedural safeguards and other rights afforded to the parent or parents of a student with a disability transfer to the student. In Virginia, the age of majority is 18.

*COV §1-13.42; 34 CFR §300.517*

"Alternate assessment" means assessment for children with disabilities who cannot participate in the state or division-wide assessment programs even with appropriate accommodations and modifications.

*34 CFR § 300.138*

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.

*34 CFR §300.5*

"Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for a child with disability or, if appropriate, that child's family; and
6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to employ or are otherwise substantially involved in the major life functions of that child.

*34 CFR §300.6*

"At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to students without disabilities or their parent or parents as part of the regular education program.

*34 CFR § 300.26 (b) (1)*

"Audiology" means services provided by a qualified audiologist licensed by the Board of Audiology and Speech-Language Pathology and includes:

1. Identification of children with hearing loss;
2. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the rehabilitation of hearing;
3. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
4. Creation and administration of programs for prevention of hearing loss;

5. Counseling and guidance of children, parents, and teachers regarding hearing loss; and
6. Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

*Regulations of the Virginia Board of Audiology and Speech-Language Pathology (8VAC 30-20-10 et seq.); 34 CFR § 300.24 (b) (1)*

"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined in this chapter. A child who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this definition are satisfied. *34 CFR § 300.7 (c) (1)*

"Behavioral intervention plan" means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of students with disabilities or with the learning of others or behaviors that require disciplinary action.

"Business days" means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days, as in 8 VAC 20-80-66 B 4 a.) *34 CFR § 300.9*

"Calendar days" means consecutive days, inclusive of Saturdays, Sundays, and officially designated holidays at the local school division level. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or school holiday, the period of time for taking such action under this chapter shall be extended to the next day, not a Saturday, Sunday, or school holiday. *34 CFR § 300.9*

"Caseload" means the number of students assigned to special education personnel.

"Change in identification" means a change in the determination of the child's disability by the team that determines eligibility.

"Change in placement" means:

1. The child's initial placement from general education to special education and related services;
2. The expulsion or long-term suspension of a student with a disability;
3. The placement change which results from a change in the identification of a disability;
4. The change from a public school to a private day, residential, or state-operated program; from a private day, residential, or state-operated program to a public school; or to a placement in a separate facility for educational purposes;
5. Termination of all special education and related services; or
6. Graduation with a standard or advanced studies high school diploma.

*Regulations Establishing Standards for Accrediting Public Schools in Virginia (8 VAC 20-131-10 et seq.); 34 CFR § 300.122 (3) (iii)*

"Change in placement," for the purposes of discipline, means:

1. A removal of a student from the student's current educational placement is for more than 10 consecutive school days; or
2. The student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as:
  - a. The length of each removal;
  - b. The total amount of time the student is removed; or
  - c. The proximity of the removals to one another.

"Chapter" means these regulations, 8 VAC 20-80-10 et seq.

*34 CFR § 300.519*

"Charter schools" means any school meeting the requirements for charter as set forth in the Code of Virginia. COV §§ 221-212.5-22.1-212.15

"Child" means any person who shall not have reached his 22nd birthday by September 30 of the current year.

"Child study committee" means a committee that enables school personnel, and nonschool personnel, as appropriate, to meet the needs of individual children who are having difficulty in the educational setting. The committee reviews existing data to make recommendations to meet children's needs and reviews the results of implementation of the recommendations. The child study committee may refer children for evaluation for special education and related services.

"Child with a disability" means a child evaluated, in accordance with this chapter, and determined, as a result of this evaluation, to have autism, deaf-blindness, a developmental delay, a hearing impairment including deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, an emotional disturbance, a severe disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment including blindness, who by reason thereof, needs special education and related services. The term "student" may also be used to refer to a child with a disability. COV § 22-1-213; 34 CFR § 300.7

"Complaint" means a request that the Virginia Department of Education investigate an alleged violation by a local educational agency of a right of a parent or parents of a child who is eligible or believed to be eligible for special education and related services based on federal and state law and regulations governing special education or a right of such child. A complaint is a statement of some disagreement with procedures or process regarding any matter relative to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education. 34 CFR §300.662

"Comprehensive Services Act" (CSA) means the Comprehensive Services Act for At-Risk Youth and Families (§ 2.2-5200 et seq. of the Code of Virginia) that establishes the collaborative administration and funding system that addresses and funds services for certain at-risk youths and their families.

*COV §§ 2.2-5200 et seq.*

"Consent" means:

1. The parent or parents or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's, parents', or eligible student's native language, or other mode of communication;
2. The parent or parents or eligible student understands and agrees, in writing, to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent or parents or eligible student understands that the granting of consent is voluntary on the part of the parent or parents or eligible student and may be revoked any time. 34 CFR § 300.500 (b) (1)

"Correctional facility" means any state facility of the Department of Corrections or the Department of Juvenile Justice, any regional or local detention home, or any regional or local jail. COV § 16.1-228; § 53.1-1

"Counseling services" means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel.

*34 CFR § 300.24 (b) (2)*

*Licensure Regulations for School Personnel (8 VAC 20-21-10 et seq.)*

"Day" means calendar day unless otherwise indicated as business day or school day. 34 CFR § 300.9

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance. 34 CFR §300.7 (c) (3)

"Deaf-blindness" means hearing and visual impairments occurring at the same time, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

*34 CFR § 300.7 (c) (2)*

"Developmental delay" means a disability affecting a child ages two through eight:

1. Who is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

2. Who, by reason thereof, needs special education and related services. *34 CFR § 300.7 (b); § 300.313*

"Direct services" means services provided to a child with a disability directly by the Virginia Department of Education, by contract, or through other arrangements. *34 CFR §300.147*

"Due process hearing" means an administrative procedure conducted by an impartial hearing officer to resolve disagreements regarding the identification, evaluation, educational placement and services, and the provision of a free appropriate public education that arise between a parent or parents and a local educational agency. A due process hearing involves the appointment of an impartial hearing officer who conducts the hearing, reviews evidence and determines what is educationally appropriate for the child with a disability.

*34 CFR §300.507 (a)*

"Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life. *34 CFR § 300.24 (b) (3)*

"Education records" means the type of records covered under the definition of "education record" in the regulations implementing the Family Education Rights and Privacy Act (20 USC § 1232g).

*34 CFR §300.560(b)*

"Emotional disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance. *34 CFR § 300.7 (c) (4)*

"Evaluation" means procedures used in accordance with this chapter to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs as described in 8 VAC 20-80-54. *34 CFR §300.500 (b) (2)*

"Extended school year services" for the purposes of this chapter means special education and related services that:

1. Are provided to a child with a disability:
  - a. Beyond the normal school year of the local educational agency;
  - b. In accordance with the child's individualized education program;
  - c. At no cost to the parent or parents of the child; and
2. Meet the standards established by the Virginia Department of Education. *34 CFR §300.309 (b)*

"Federal financial assistance" means any grant, loan, contract or any other arrangement by which the U.S. Department of Education provides or otherwise makes available assistance in the form of funds, services of federal personnel, or real and personal property.

"Free appropriate public education" (FAPE) means special education and related services that:

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the Virginia Board of Education;
3. Include preschool, elementary school, middle school or secondary school education in the state; and
4. Are provided in conformity with an individualized education program that meets the requirements of this chapter.

*34 CFR §300.13*

"Functional behavioral assessment" means a process to determine the underlying cause or functions of a child's behavior that impede the learning of the child with a disability or the learning of the child's peers.

"General curriculum" means the same curriculum used with children without disabilities adopted by a local educational agency, schools within the local educational agency or, where applicable, the Virginia Department of Education for all children from preschool through secondary school. The term relates to content of the curriculum and not to the setting in which it is taught.

"Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

*34 CFR §300.7 (c) (5)*

"Home-based instruction" means services that are delivered in the home setting (or other agreed upon setting) in accordance with the child's individualized education program.

"Homebound instruction" means academic instruction provided to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist. For a child with a disability, the IEP must determine the delivery of services, including the number of hours of services.

*Regulations Establishing Standards for Accrediting Public Schools in Virginia (8 VAC 20-131-180)*

"Home instruction" means instruction of a child or children by a parent or parents, guardian or other person having control or charge of such child or children as an alternative to attendance in a public or private school in accordance with the provisions of the Code of Virginia. This instruction may also be termed home schooling.

*COV § 22.1-254.1*

"Home tutoring" means instruction by a tutor or teacher with qualifications prescribed by the Virginia Board of Education, as an alternative to attendance in a public or private school and approved by the division superintendent in accordance with the provisions of the Code of Virginia. This tutoring is often used as an alternative form of home schooling but is not home instruction as defined in the Code of Virginia.

*COV §22.1-254*

"Impartial hearing officer" means a person, selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia to conduct a due process hearing.

"Implementation plan" means the plan developed by the local educational agency designed to operationalize the decision of the hearing officer or agreement between the parties. The implementation plan shall include the name and position of the individual in the local educational agency charged with the implementation of the decision (case manager) as well as the date for effecting such plan.

*34 CFR § 300.600*

"Independent educational evaluation" (IEE) means an evaluation conducted by a qualified examiner or examiners who are not employed by the local educational agency responsible for the education of the child in question.

*34 CFR § 300.50 2 (a) (3) (i)*

"Individualized education program" (IEP) means a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with this chapter. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the needs.

*34 CFR § 300.340 (a)*

"Individualized family service plan" (IFSP) under Part C means a written plan for providing early intervention services to an infant or toddler with a disability eligible under Part C and to the child's family.

*34 CFR § 303.340 (b)*

"Infant and toddler with a disability" means a child, ages birth to two, inclusive, whose birthday falls on or before September 30, or who is eligible to receive services in the Part C early intervention system up to age three, and who:

1. Has delayed functioning;
2. Manifests atypical development or behavior;
3. Has behavioral disorders that interfere with acquisition of developmental skills; or
4. Has a diagnosed physical or mental condition that has a high probability of resulting in delay, even though no current delay exists.

*COV § 2.1-760; 34 CFR § 303.16 (a)*

"Informed parental consent": see "Consent."

"Initial placement" means the first local educational agency placement in either a public school, state-operated program, or private school program for the purpose of providing special education or related services.

"Interpreting" means translating from one language to another (e.g., sign language to spoken English); for the purposes of this chapter, this includes oral interpreting and transliterating for signed English systems or for cued speech/cued language.

"Interpreting personnel" means individuals providing educational interpreting services who meet the qualifications set forth under 8 VAC 20-80-45 E.

*Regulations Governing Interpreter Services for the Deaf and Hard of Hearing (20 VAC 20-30-10 et seq.)*

"Itinerant" means a qualified professional employed by the local school division who provides services in various locations to children with disabilities.

"Learning disability": see "Specific learning disability."

"Least restrictive environment" (LRE) means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

*34 CFR § 300.550 et seq.*

"Level I services" means the provision of special education and related services to children with disabilities for less than 50% of their instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described in the individualized education program, rather than the location of services.

*Virginia Appropriation Act*

"Level II services" means the provision of special education and related services to children with disabilities for 50% or more of the instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described in the individualized education program, rather than the location of services.

*Virginia Appropriation Act*

"Local educational agency" means a local school division governed by a local school board, a state-operated program that is funded and administered by the Commonwealth of Virginia, or the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.

"Manifestation determination review" means a process to review all relevant information and the relationship between the child's disability and the behavior subject to the disciplinary action. *COV § 22.1-270 34*

"Medical services" means services provided by a licensed physician or nurse practitioner to determine a child's medically related disability that results in the child's need for special education and related services.

COV §22.1-270 34 CFR §300.24 (b) (4)

"Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. 34 CFR §300.7 (c) (6)

"Multiple disabilities" means two or more impairments at the same time (for example, mental retardation - blindness, learning disability - orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness. 34 CFR § 300.7 (c) (7)

"Native language" if used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a child, the language normally used by the parent or parents of the child, except in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). 34 CFR § 300.19

"Nonacademic services and extracurricular services" may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available. 34 CFR § 300.306 (b)

"Notice" means written statements in English or in the primary language of the home of the parent or parents, or, if the language or other mode of communication of the parent or parents is not a written language, oral communication in the primary language of the home of the parent or parents. If an individual is deaf or blind, or has no written language, the mode of communication would be that normally used by the individual (such as sign language, Braille, or oral communication). 34 CFR § 300.503 (c)

"Occupational therapy" means services provided by a qualified occupational therapist or services provided under the direction or supervision of a qualified occupational therapist and includes:

1. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
2. Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
3. Preventing, through early intervention, initial or further impairment or loss of function.

*Regulations for the Licensure of Occupational Therapists (18 VAC 85-80-10 et seq.); 34 CFR § 300.24 (b) (5)*

"Orientation and mobility services" means services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes teaching children the following, as appropriate:

1. Spatial and environmental concepts and use of information received by the senses (e.g., sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
2. To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
3. To understand and use remaining vision and distance low vision aids; and
4. Other concepts, techniques, and tools. 34 CFR §300.24 (b) (6)

"Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., club foot, absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). 34 CFR §300.7 (c) (8)

"Other health impairment" means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational

environment, that (i) is due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, arthritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, attention deficit disorder or attention deficit hyperactivity disorder, and diabetes; and (ii) adversely affects a child's educational performance. *34 CFR § 300.7 (c) (9)*

"Paraprofessional" means an appropriately trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter. *34 CFR § 300.136 (f)*

"Parent or parents" means a natural or adoptive parent or parents of a child, a guardian, a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare), a foster parent under the circumstances described below, or a surrogate parent who has been appointed in accordance with this chapter. The term means either parent, unless the local educational agency has been provided with evidence that there is a legally binding instrument, state law, or court order that has terminated the parent's or parents' rights. A foster parent may also serve as a parent:

1. If the natural parent's or parents' authority to make educational decisions on the child's behalf has been extinguished under § 16.1-283, § 16.1-277.01 or § 16.1-277.02 of the Code of Virginia or a comparable law in another state;
2. The child is in permanent foster care pursuant to § 63.1-206.1 of the Code of Virginia or comparable law in another state; and
3. The foster parent or parents (i) have an ongoing, long-term parental relationship with the child; (ii) are willing to make the educational decisions required of the parent or parents under this chapter; and (iii) have no interest that would conflict with the interests of the child.

The term "parent or parents" does not include local or state agencies or their agents, including local departments of social services, if the child is in the custody of such an agency.

*COV §22.1-1; 34 CFR § 300.20*

"Parent counseling and training" means (i) assisting parents in understanding the special needs of their child; (ii) providing parents with information about child development; and (iii) helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

*34 CFR §300.24 (b) (7)*

"Participating agency" means a state or local agency (including a Comprehensive Services Act team), other than the local educational agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student. *34 CFR §300.340 (b)*

"Physical education" means the development of:

1. Physical and motor fitness;
2. Fundamental motor skills and patterns; and
3. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

The term includes special physical education, adapted physical education, movement education, and motor development. *34 CFR § 300.26 (b) (2)*

"Physical therapy" means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction.

*Regulations for Licensure of Physical Therapy (18 VAC 85-80-10 et seq.); 34 CFR §300.24 (b) (8)*

"Private school children with disabilities" means children with disabilities enrolled by their parent or parents in private schools, other than children with disabilities who are placed in a private school by a local school division or Comprehensive Services Act team in accordance with 8 VAC 20-80-66 A. *34 CFR § 300.450*

"Program" means the special education and related services, including accommodations, modifications, supplementary aids and services, as determined by a child's individualized education program.

"Psychological services" means those services provided by a qualified psychologist or under the direction or supervision of a qualified psychologist, including:

1. Administering psychological and educational tests, and other assessment procedures;
2. Interpreting assessment results;
3. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
4. Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;
5. Planning and managing a program of psychological services, including psychological counseling for children and parents; and
6. Assisting in developing positive behavioral intervention strategies. *34 CFR §300.24 (b) (9)*

"Public expense" means that the local educational agency either pays for the full cost of the service or evaluation or ensures that the service or evaluation is otherwise provided at no cost to the parent or parents.

*34 CFR §300.502 (a) (3) (ii)*

"Public notice" means the process by which certain information is made available to the general public. Public notice procedures may include, but not be limited to, newspaper advertisements, radio announcements, television features and announcements, handbills, brochures, electronic means, and other methods which are likely to succeed in providing information to the public.

"Qualified person who has a disability" means a "qualified handicapped person" as defined in the federal regulations implementing the Rehabilitation Act of 1973 and its amendments (29 USC § 701 et seq.).

"Qualified personnel" means personnel who have met Virginia Department of Education approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individual is providing special education or related services. In addition, the professional must meet other state agency requirements for such professional service and Virginia licensure requirements as designated by Virginia law or regulations. *34 CFR §300.23*

"Recreation" includes:

1. Assessment of leisure function;
2. Therapeutic recreation services;
3. Recreation program in schools and community agencies; and
4. Leisure education. *34 CFR § 30.24 (b) (10)*

"Reevaluation" means completion of a new evaluation in accordance with this chapter. *34 CFR § 300.321*

"Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended. *34 CFR § 300.24 (b) (11)*

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting and transliterating; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation and psychological counseling; orientation and mobility services; medical services for diagnostic or evaluation purposes; school health services; social work services in schools; and parent counseling and training.

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a child with a disability to benefit from special education. *COV § 22.1-213; 34 CFR § 300.24(a)*

"School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. The term has the same meaning for all children in school, including children with and without disabilities. 34 CFR §300.9

"School health services" means services provided by a qualified school nurse or other qualified person.

*COV §§ 54.1-3000 et seq.; 34 CFR § 300.24 (b) (12)*

"Screening" means those processes that are used routinely with all children to identify previously unrecognized needs and that may result in a referral for special education and related services or other referral or intervention.

"Section 504" means that section of the Rehabilitation Act of 1973, as amended (29 USC § 701 et seq.), which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance. 29 USC §702 et seq.

"Severe disability" means a primary disability that:

1. Severely impairs cognitive abilities, adaptive skills, and life functioning;
2. May have associated severe behavior problems;
3. Has the high probability of additional physical or sensory disabilities; and
4. Requires significantly more educational resources than are provided for the children with mild and moderate disabilities in special education programs.

"Social work services in schools" means those services provided by a school social worker or qualified visiting teacher, including:

1. Preparing a social or developmental history on a child with a disability;
2. Group and individual counseling with the child and family;
3. Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
4. Mobilizing school and community resources to enable the child to learn as effectively as possible in the child's educational program; and
5. Assisting in developing positive behavioral intervention strategies for the child.

*Licensure Regulations for School Personnel (8 VAC 20-21-20 et seq.); 34 CFR § 300.24 (b) (13)*

"Special education" means specially designed instruction, at no cost to the parent or parents, to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, in institutions, and in other settings and instruction in physical education. The term includes each of the following if it meets the requirements of the definition of special education:

1. Speech-language pathology services;
2. Vocational education; and
3. Travel training.

*COV § 221-213; 34 CFR §300.26*

"Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction:

1. To address the unique needs of the child that result from the child's disability; and
2. To ensure access of the child to the general curriculum, so that the child can meet the educational standards that apply to all children within the jurisdiction of the local educational agency.

*34 CFR § 300.26 (b) (3)*

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. The term includes such conditions as

perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of mental retardation; of emotional disturbance; or of environmental, cultural, or economic disadvantage.

*COV §22.1-213; 34 CFR §300.7 (c) (10)*

"Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

*34 CFR §300.7 (c) (11)*

"Speech-language pathology services" means the following:

1. Identification of children with speech or language impairments;
2. Diagnosis and appraisal of specific speech or language impairments;
3. Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
4. Provision of speech and language services for the habilitation or prevention of communicative impairments; and
5. Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

*34 CFR § 300.24 (b) (14)*

"State assessment program" means the state assessment program in Virginia under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) that is the component of the state assessment system used for accountability.

"State educational agency" means the Virginia Department of Education.

"State-operated programs" means programs which provide educational services to children and youth who reside in facilities according to the admissions policies and procedures of those facilities that are the responsibility of state boards, agencies, or institutions. This does not include the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.

*COV §§ 22.1-7; 22.1-340; 22.1-345*

"Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate in accordance with this chapter.

*34 CFR §300.28*

"Surrogate parent" means a person appointed in accordance with procedures set forth in this chapter to ensure that children are afforded the protection of procedural safeguards and the provision of a free appropriate public education.

*34 CFR §300.515*

"Transition from Part C (Early Intervention Program for Infants and Toddlers with Disabilities) services" means the steps identified in the Individualized Family Services Plan (IFSP) to be taken to support the transition of the child to:

1. Early childhood special education to the extent that those services are appropriate; or
2. Other services that may be available, if appropriate.

*34 CFR §303.344*

"Transition services" means a coordinated set of activities for a student with a disability that is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education.

*34 CFR §300.29*

"Transportation" includes:

1. Travel to and from school and between schools;
2. Travel in and around school buildings; and
3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability. *34 CFR §300.24 (b) (15)*

"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. *34 CFR §300.7 (c) (12)*

"Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:

1. Develop an awareness of the environment in which they live; and
2. Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community). *34 CFR § 300.26 (b) (4)*

"Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton" or "Virginia schools" means the Virginia schools authorized by the Virginia Board of Education and administered and supervised by the Superintendent of Public Instruction. *COV § 22.1-346*

"Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

*34 CFR § 300.7 (c) (13)*

"Vocational education," for the purposes of special education, means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree. *34 CFR § 300.26 (b) (5)*

## PART II. RESPONSIBILITIES OF THE STATE DEPARTMENT OF EDUCATION.

### 8 VAC 20-80-20. (Repealed.)

### 8 VAC 20-80-30. Functions of the Virginia Department of Education.

The Virginia Department of Education (state educational agency) shall perform the following functions:

1. Ensure that all children with disabilities, aged two to 21, inclusive, residing in Virginia have a right to a free appropriate public education, including, but not limited to, children with disabilities who:

*34 CFR §§ 300.2; 300.121*

- a. Are migrant;
- b. Are homeless;
- c. Have been suspended or expelled from school, in accordance with this chapter;
- d. Are incarcerated in a state, regional, or local adult or juvenile correctional facility, with the exception of those provisions identified in 8 VAC 20-80-62 H;
- e. Are in special education and related services, even though they are advancing from grade to grade;
- f. Are in state-operated programs; or
- g. Are in public charter schools in accordance with the Code of Virginia.

2. Except as provided in 8 VAC 20-80-56 D, ensure that each local school division develops an IEP for each child with a disability served by that local school division and that an IEP is developed for each child with a disability placed in a private school by a local school division or Comprehensive Services Act team.

*34 CFR §§ 300.341; 300.401*

3. Review and submit to the Virginia Board of Education for approval a plan for the provision of special education and related services from each local educational agency responsible for providing educational services to children with disabilities.

*COV § 22.1-215; 34 CFR § 300.181*

4. Prepare and submit for public hearing; receive comment from the public, members of the state special education advisory committee and private special education schools; and place on file with the U.S. Department of Education, final policies and procedures to ensure that the conditions of state eligibility for funding under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) are met.

*34 CFR §§ 300.121-300.156, 300.550, 300.555*

5. Develop procedures for implementing state and federal laws and regulations pertaining to the education of children with disabilities.

*COV § 22.1-214 34 CFR § 300.600*

6. Assist local educational agencies and other participating state agencies in the implementation of state and federal laws and regulations pertaining to the education of children with disabilities by providing technical assistance and consultative services.

*34 CFR § 300.554*

7. Review and evaluate compliance of local educational agencies with state and federal laws and regulations pertaining to the education of children with disabilities and require corrective actions where needed.

*34 CFR §§ 300.507; 300.556; 300.660*

a. Administer a special education due process hearing system that provides procedures for training of hearing officers, requests for a hearing, appointment of hearing officers, management and monitoring of hearings, and administration of the hearing system.

b. Maintain and operate a complaint system that provides for the investigation and issuance of findings regarding alleged violations of the educational rights of parents or children with disabilities. Allegations may be made by public or private agencies, individuals or organizations.

8. Review and evaluate compliance of private nonsectarian special education schools that are licensed or have a certificate to operate in order to ensure that each child with a disability placed in the school by a

local school division or Comprehensive Services Act team is provided special education and related services at no cost to the parent or parents in conformance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies.

*34 CFR §§ 300.401; 300.402; 300.554*

9. Review and evaluate compliance of the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton to ensure that each child with a disability placed in the school by a local school division is provided special education and related services at no cost to the parent or parents in accordance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies. *34 CFR §300.554*

10. Establish and maintain a state special education advisory committee composed of individuals involved in or concerned with the education of children with disabilities. *34 CFR §§ 300.150; 300.650-653*

a. Membership. The membership shall consist of individuals appointed by the Board of Education who are involved in, or concerned with, the education of children with disabilities. The majority shall be individuals with disabilities or parents of children with disabilities. Membership shall include one or more of the following:

- (1) Parents of children with disabilities;
- (2) Individuals with disabilities;
- (3) Teachers;
- (4) Representatives of institutions of higher education that prepare special education and related services personnel;
- (5) State and local education officials;
- (6) Administrators of programs for children with disabilities;
- (7) Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;
- (8) Representatives of private schools and public charter schools;
- (9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and
- (10) Representatives from Virginia's juvenile and adult correctional educational agency.

b. Duties. The state special education advisory committee shall:

- (1) Advise the Virginia Department of Education and the Virginia Board of Education of unmet needs within the state in the education of children with disabilities;
- (2) Comment publicly on any rules or regulations proposed by the Virginia Board of Education regarding the education of children with disabilities;
- (3) Advise the Virginia Department of Education in developing evaluations and reporting on data to the U.S. Secretary of Education under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.);
- (4) Advise the Virginia Department of Education in developing corrective action plans to address findings identified in federal monitoring reports under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.);
- (5) Advise the Virginia Department of Education in developing and implementing policies relating to the coordination of services for children with disabilities;
- (6) Advise the Virginia Department of Education on eligible children with disabilities in state, regional, or local adult or juvenile correctional facilities; and

(7) Review the policies and procedures for the provision of special education and related services under 8 VAC 20-80-90 B 1 submitted by state-operated programs, the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.

c. Procedures.

(1) The state special education advisory committee shall meet as often as necessary to conduct its business.

(2) By July 1 of each year, the state special education advisory committee shall submit an annual report of committee activities and suggestions to the Virginia Board of Education. The report must be made available to the public in a manner consistent with other public reporting requirements of Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

(3) Official minutes must be kept on all committee meetings and must be made available to the public on request.

(4) All meetings and agenda items must be publicly announced enough in advance of the meeting to afford interested parties a reasonable opportunity to attend, and meetings must be open to the public.

(5) Interpreters and other necessary services shall be provided for advisory committee members or participants.

(6) The advisory committee shall serve without compensation, but the Virginia Department of Education shall reimburse the committee for reasonable and necessary expenses for attending meetings and performing duties.

11. Provide at least annually to the state special education advisory committee all findings and decisions of due process hearings, with all personally identifiable information deleted, and in addition, a summary of the complaint findings. *34 CFR § 300.509 (d)*

12. Establish goals for the performance of children with disabilities that will promote the purposes of the Individuals with Disabilities Education Act as stated in 34 CFR § 300.1 and are consistent, to the maximum extent appropriate, with other goals and standards as established by the Virginia Board of Education and the Code of Virginia for all children as follows: *34 CFR §300.137*

a. Establish performance indicators to assess progress toward achieving those goals that address, at a minimum, dropout rates, graduation rates, and performance of children with disabilities on assessments; and

b. Every two years, report to the public and the United States Secretary of Education on progress of the state and children with disabilities in the state toward meeting the goals.

13. Develop and implement a comprehensive personnel development plan which is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel, including paraprofessionals, and meets the requirements for a state improvement plan relating to personnel development. *34 CFR §§ 300.135; 300.136; 300.381-300.382*

14. Demonstrate that children with disabilities are included in state and local assessment programs, with accommodations and modifications, or in an alternate assessment. Report to the public, with the same frequency and in the same detail as reports on assessments are issued for children without disabilities, the number of children with disabilities participating in regular and alternate assessments, and performance results on regular and alternate assessments, including both aggregated and disaggregated data. The reports shall include this information if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

*34 CFR §§300.138; 300.139*

15. Establish procedures for disseminating significant information derived from research, demonstration programs, and projects involving children with disabilities.

16. Secure agreements with state agency heads regarding appropriate roles and responsibilities for the identification, evaluation, placement, and delivery of or payment for educational and related services in order to ensure that a free appropriate public education is provided to all children with disabilities. The

agreements shall address financial responsibility for each nonpublic educational agency for the provision of services. The agreements shall include procedures for resolving interagency disputes and for securing reimbursement from other agencies, including procedures under which local educational agencies may initiate proceedings. *34 CFR § 300.141; 300.142*

17. Disburse the appropriated funds for the education of children with disabilities in the Commonwealth to local school divisions and state-operated programs which are in compliance with state and federal laws and regulations pertaining to the education of children with disabilities, including submission of revised policies and procedures for provision of special education and related services.

18. Ensure that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services. Report and certify to the United States Department of Education, no later than February 1 of each year, the number of children with disabilities in local educational agencies who are receiving special education and related services.

*34 CFR §§ 300.125; 300.750-300.755*

19. Establish procedures designed to fully inform parents and children with disabilities of educational rights and due process procedures.

20. Provide private special education schools that are licensed or have a certificate to operate with copies of all state regulations and standards relating to the education of children with disabilities and revisions as they occur.

21. Establish and implement a mediation process in accordance with the Individuals with Disabilities Education Act (20 USC § 1400 et seq.), including providing for the cost of mediators and support personnel.

*COV § 22.1-214; 34 CFR §§ 300.370, 300.506*

22. Ensure that requirements regarding use of public or private insurance to pay for services required under this chapter are met.

*34 CFR § 300.142*

23. If the Virginia Department of Education provides direct services to children with disabilities, it shall comply with state and federal requirements as if it is a local educational agency and use federal funds under Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to provide services.

*34 CFR § 300.147*

a. The Virginia Department of Education shall use payments that would otherwise have been available to a local educational agency to provide special education services directly to children with disabilities residing in the local school division or served by a state-operated program in accordance with the conditions of § 1413(h) of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

b. The Virginia Department of Education may provide special education and related services in the manner and at the location it considers appropriate, consistent with least restrictive environment requirements.

24. Ensure that children who participate in early intervention services assisted under Part C of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) and who will participate in preschool programs assisted under Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) experience a smooth and effective transition to early childhood special education programs in a manner consistent with the Virginia Part C lead agency's early intervention policies and procedures, as follows:

*34 CFR § 300.132*

a. For those children who at age two (on or before September 30) are found eligible for Part B early childhood special education programs, IEPs are developed and implemented for those children; and

b. The local educational agency will participate in transition planning conferences arranged by the designated local Part C early intervention agency.

25. Ensure the protection of the confidentiality of any personally identifiable information collected, maintained, or used under Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.). This shall include notice to fully inform parents about the confidentiality of information, as specified

in 34 CFR 300.561, and policies and procedures that are used in the event that parents refuse to provide consent for disclosure of education records.

*34 CFR §§ 300.127; 300.561; 300.575*

### PART III.

## RESPONSIBILITIES OF LOCAL SCHOOL DIVISIONS AND STATE-OPERATED PROGRAMS.

#### **8 VAC 20-80-40. Responsibility of local school divisions and state-operated programs.**

A. The requirements set forth in this chapter are applicable to local school divisions and state-operated programs providing education and related services for children with disabilities and are developed in accordance with state and federal laws and regulations.

B. Each local school division shall ensure that all children with disabilities, aged two to 21, inclusive, residing in that school division have a right to a free appropriate public education, including:

*COV § 22.1-214; 34 CFR §§300.2; 300.121; 300.132; 300.312*

1. Children with disabilities who are migrant;
2. Children with disabilities who are homeless;
3. Children with disabilities who are in need of special education and related services, even though they are advancing from grade to grade;
4. Children with disabilities who are served in a charter school in accordance with the Code of Virginia;
5. Children with disabilities who have been suspended or expelled from school, in accordance with this chapter;
6. Children with disabilities who are incarcerated for 10 or more days in a regional or local jail in its jurisdiction; with the exception of those provisions identified in 8 VAC 20-80-62;
7. Children with disabilities who are residents of the school division and who are on house arrest, as ordered by a court of competent jurisdiction; services shall be provided at a mutually agreed upon location;
8. Children with disabilities who are in foster care and residents of Virginia, but not residents of the school division, under the following conditions: *COV § 221-101.1*
  - a. The child has been placed in foster care or other custodial care within the geographical boundaries of the school division, placed by a Virginia agency, whether state or local, that is authorized by the Code of Virginia to place children;
  - b. The child has been placed, not solely for school purposes, in a child-caring institution or group home licensed under the provisions of Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia that is located within the geographical boundaries of the school division; and
  - c. If the child's individualized education program prescribes placement in a private day or residential special education facility, the responsibility for a free and appropriate public education shall transfer to the local school division that is the participant in the Community Policy and Management Team of the locality that has responsibility for the child under the Comprehensive Services Act (§ 2.2-5200 et seq. of the Code of Virginia);
9. Children with disabilities who are placed in a private residential placement by a Comprehensive Services Act team. The local school division that is part of the Comprehensive Services Act team that places the child in the private residential placement for noneducational reasons shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in the residential placement;
10. Children with disabilities who are placed for noneducational reasons and are not physically present in the school division, but whose parent or parents continue to reside in the local school division in accordance with § 22.1-3 of the Code of Virginia.
  - a. For the purpose of determining residency, the residence of the child with a disability shall be determined as follows:

(1) If placed for noneducational reasons in a nursing facility, a long stay hospital, or an intermediate care facility for the mentally retarded under funding from the Virginia Department of Medical Assistance Services, the child is a resident of the division where the parent or parents reside, unless the child is in a state-operated program;

(2) If placed for noneducational reasons in a group home by a community services board, a court service unit, or a court of competent jurisdiction, the child is a resident of the division where the parent or parents reside, unless the child is in a state-operated program;

(3) If aged 18 or older, placed for noneducational reasons in a nursing facility, a long stay hospital, or an intermediate care facility for the mentally retarded under funding from the Virginia Department of Medical Assistance Services, and who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child with a disability is in a state-operated program; and

(4) If aged 18 or older, placed for noneducational reasons in a group home by a community services board and who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child with a disability is in a state-operated program.

b. If there is a dispute between local school divisions regarding the parent's, parents', or legal guardian's residence, the local school division of the parent's, parents', or legal guardian's last known place of residence is responsible until such dispute is resolved or the parent's, parents', or legal guardian's residence is established in another local school division;

11. Children with disabilities, aged 18 or older, who have not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions and who reside in the school division, unless the adult child is in a state-operated program. The adult child's residence shall be the fixed home to which the adult child will return following a temporary absence and at which the adult child intends to stay. No adult child shall have more than one residence at a time; and

12. Children with disabilities, aged 18 or older, who have been declared incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions and guardian resides in the school division, unless the adult child with a disability is in a state-operated program. The adult child's residence shall be the fixed home to which the adult child will return following a temporary absence and at which the adult child with a disability intends to stay. No adult child with a disability shall have more than one residence at a time.

C. Each state-operated program shall ensure that all children with disabilities, aged two to 21, inclusive, in that institution have the right to a free appropriate public education. COV §22.1-7

### **8 VAC 20-80-45. Special education staffing requirements.**

A. School age programs. The following specifies the staffing patterns for special education services for school age (five to 21, inclusive) children. *Virginia Appropriations Act; 34 CFR §300.136 (a) and (b) (1)*

1. Grouping. When children with disabilities are removed from the general education classroom for special education and related services, they may receive services with children with the same disability or with children with different disabilities. Each child must receive special education services from special education personnel assigned in accordance with the requirements of Figure A in this section. Each child may receive some special education and related services from personnel not endorsed in the child's disability area or areas, but holding a special education endorsement as specified in Figure A.

2. Personnel assignment.

a. Personnel assignment requirements are listed in Figure A.

b. Personnel not meeting the assignment requirements of Figure A may provide some services to children with disabilities if the children receive special education services from personnel assigned in accordance with Figure A.

c. Personnel providing services to a child who has more than one disability are not required to be endorsed in all areas of the child's disabilities. The child shall receive some services for each disability from appropriately endorsed personnel.

3. Caseload standards.

a. The maximum special education caseloads, with and without paraprofessionals, are set and funded in the Virginia Appropriation Act. See Appendix A for the funded caseloads. Special education services for children with visual impairment shall be established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.

b. If children with disabilities in a single building receive academic content area instruction from multiple special education teachers, the teachers' caseloads shall be determined by using a building average.

(1) A building average is computed by dividing the total weights (found in Appendix A) for all children served in this fashion by the number of special education teachers providing services. Any itinerant teacher shall be counted according to the amount of time the teacher spends in the school. Subdivision 3 d of this subsection applies for any teacher assigned to administrative duties or to providing services to children who do not have disabilities.

(2) The building average shall not exceed 20 points if services are provided to students receiving level I services and to children receiving level II services. The building average shall not exceed 24 points if services are provided only to children receiving level I services.

(3) No more than 14 children shall be assigned to a single class period if there are similar achievement levels and one subject area and level are taught. No more than 10 students shall be assigned to a single class period when there are varying achievement levels and more than one subject area and level are taught.

c. Special education personnel may also be assigned to serve children who are not eligible for special education and related services under this chapter, as long as special education personnel hold appropriate licenses and endorsements for such assignments.

d. When special education personnel are assigned to provide services for children who do not have a disability under this chapter or are assigned to administrative duties, a reduction in the caseload specified in the Virginia Appropriation Act must be made in proportion to the percentage of school time on such assignment.

(1) This provision does not apply when special education and related services are provided in a general education class, based on the goals and objectives of the IEP of at least one child in that classroom, and children without disabilities incidentally benefit from such services.

(2) When special education personnel provide services in a general education classroom based on the IEP goals and objectives of at least one child in that classroom, the special education caseloads do not include children with disabilities who incidentally benefit from such services.

B. Programs for early childhood special education. *Virginia Appropriations Act; 34 CFR § 300.136 (a) and (b) (1)*

1. Children of preschool ages (two to five, inclusive) who are eligible for special education receive early childhood special education. The amount of services is determined by the child's individualized education program team. A full 5 1/2 hour day shall be provided if determined appropriate by the IEP team.

2. Staffing requirements.

a. Children receiving early childhood special education services may receive services together with other preschool-aged children with the same or with different disabilities.

b. Personnel assignment standards are listed in Figure B.

c. The maximum special education caseloads, with and without paraprofessionals, are set and funded in the Virginia Appropriation Act. See Appendix A for the funded caseloads. Special education services for children with visual impairment shall be established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.

C. Staffing for education programs in regional and local jails. Special education personnel with any special education endorsement, except early childhood special education and speech-language impairment, may provide instructional services to eligible students with disabilities incarcerated in a regional or local jail.

D. Alternative special education staffing plan. Local school divisions and private special education schools may offer an alternative staffing pattern that ensures the requirements of this chapter are met. An alternative staffing plan that reduces the number of staff positions will not be acceptable. If the local school division or private special education director plans to implement a different staffing pattern from those specified in this chapter, the local school division superintendent, or private special education school director, shall receive approval to implement an alternative staffing plan from the Virginia Department of Education in accordance with the procedures established by the Virginia Department of Education. Information on alternative staffing plan requests and approvals shall be available to teachers and parents.

Figure A. Special education personnel assignment requirements for school-aged children, ages five to 21, inclusive, in local school divisions.

Disability Category	Endorsement
Autism	any special education endorsement, as appropriate to student needs
Deaf-blindness	severe disabilities K-12 or any other special education endorsement, as appropriate to student needs
Developmental Delay: ages 5 - 8	any special education endorsement, as appropriate to student needs
Emotional Disturbance	emotional disturbance K-12
Hearing Impairment/Deaf	hearing impairments preK-12
Learning Disabilities	learning disabilities K-12
Mental Retardation	mental retardation K-12
Multiple Disabilities	severe disabilities or any other special education endorsement, as appropriate to student needs
Orthopedic Impairment	any special education endorsement, as appropriate to student needs
Other Health Impairment	any special education endorsement, as appropriate to student needs
Severe Disabilities	severe disabilities K-12
Speech or Language Impairment	speech or language disorders preK-12
Traumatic Brain Injury	any special education endorsement, as appropriate to student needs
Visual Impairment	visual impairments preK-12

*Licensure Regulations for School Personnel (8 VAC 20-21-10 et seq.)*

Figure B. Special education personnel assignment requirements for preschool children, ages two to five, inclusive, in local school divisions.

Disability Category	Endorsement
Developmental Delay: ages 2 - 5	early childhood special education
Hearing Impairment/Deaf	hearing impairments preK-12
Speech or language impairment	speech or language disorders preK-12
Visual Impairment	visual impairments preK-12
All other disability categories	early childhood special education

*Licensure Regulations for School Personnel (8 VAC 20-21-10 et seq.)*

E. Educational interpreting services.

*34 CFR 300.136 (a), (b) (1), (c), (g)*

1. The qualification requirements for personnel providing interpreting services are as follows:

a. Personnel providing educational interpreting services for children using sign language shall have a Virginia Quality Assurance Screening (VQAS) Level III, any Registry of Interpreters for the Deaf Certificate (excluding Certificate of Deaf Interpretation), or any other state or national certification recognized by the Virginia Department for the Deaf and Hard-of-Hearing as equivalent to or exceeding the VQAS Level III.

b. Personnel providing educational interpreting services for children using cued speech or cued language shall have a Virginia Quality Assurance Screening Level III for cued speech or hold a Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit).

- c. Personnel providing educational interpreting services for children requiring oral interpreting shall meet minimum requirements for competency on the Virginia Quality Assurance Screening's written assessment of the Code of Ethics.
2. Personnel who provide interpreting services for children who use sign language or cued speech or cued language and who do not hold the required qualifications may be employed in accordance with all of the following criteria:
    - a. Personnel shall have a Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard-of-Hearing, upon hiring date in any local educational agency in Virginia;
    - b. Personnel shall achieve the qualification requirements by the third anniversary of their hiring date in any local educational agency in Virginia; and
    - c. The local educational agency shall annually inform the Virginia Department of Education of: (i) the person's name, social security number, and hiring date; (ii) the person's progress toward meeting the qualification requirements; and (iii) the person's development plan.
  3. Waiver of qualification requirements for personnel providing interpreting services.
    - a. Conditions for requesting a waiver.
      - (1) The local educational agency superintendent or director of a private special education school that is licensed or has a certificate to operate shall request a waiver of the qualification requirements for personnel who do not meet the qualification requirements for providing interpreting services. The request shall include a statement certifying that the local educational agency or private special education school has recruited personnel who meet the qualification requirements and has not had three or more applicants who hold at least a VQAS Level I.
      - (2) A waiver may be provided for personnel who do not hold the qualifications in subdivision 2 a of this subsection, and who hold interpreting credentials from another state or who have registered to take the VQAS, and who take the assessment as scheduled. The waiver shall be in place only until the local educational agency receives the notice of equivalency of the out-of-state credential or of the attainment of the VQAS level. The waiver shall not be extended if a VQAS Level I, or higher, is not obtained.
      - (3) A waiver may be provided for one year for individuals who have not attained the qualification requirements in subdivision 2 b of this subsection and who hold a VQAS Level II. This waiver may be provided for one additional year if the individual continues to hold a VQAS Level II and has shown improvement in percentage scores.
    - b. Timeline for requesting a waiver. A request to waive the qualification requirements shall be submitted to the Virginia Department of Education within 30 days of the person's initial or continuing assignment to provide interpreting services, using a form authorized by the Virginia Department of Education.

## **8 VAC 20-80-50. Child find.**

### **A. Target ages.**

1. Each local school division shall maintain an active and continuing child find program designed to identify, locate and evaluate those children residing in the jurisdiction who are birth to age 21, inclusive, who are in need of special education and related services, including children who:

*34 CFR § 300.121 (e); 300.125*

- a. Are highly mobile, such as migrant and homeless children;
- b. Attend private schools, including children who are home-instructed or home-tutored;
- c. Are suspected of being children with disabilities under this chapter and in need of special education, even though they are advancing from grade to grade; and

d. Are under age 18 who are suspected of having a disability who need special education and related services and who are incarcerated in a regional or local jail in its jurisdiction for 10 or more days.

*34 CFR §300.125 (c)*

2. Each local school division shall coordinate child find activities for infants and toddlers (birth to age two, inclusive) with the Part C local interagency coordinating council.

3. Each local school division shall locate, identify and evaluate all private school children with disabilities, including religious school children and home-instructed or home-tutored children residing in the jurisdiction of the local school division, in accordance with 8 VAC 20-80-66. The activities undertaken to carry out this responsibility for private school children with disabilities must be comparable to the activities undertaken for children with disabilities in public schools. Each local school division shall consult with appropriate representatives of private school children with disabilities on how to carry out the child find and evaluation activities.

*34 CFR § 300.451 (a) and (b)*

**B. Public awareness.**

1. Each local school division shall, at least annually, conduct a public awareness campaign to:

a. Inform the community of a person's, ages two to 21, inclusive, statutory right to a free appropriate public education and the availability of special education programs and services;

b. Generate referrals; and

c. Explain the nature of disabilities, the early warning signs of disabilities, and the need for services to begin early.

2. Procedures for informing the community shall show evidence of the use of a variety of materials and media and shall:

a. Provide for personal contacts with community groups, public and private agencies, and organizations; and

b. Provide information in the person's native language or primary mode of communication.

3. The local school division shall show evidence of involvement of parents and community members in the required child find and community awareness campaign.

**C. Screening.**

1. The screening process for all children enrolled in a local school division in Virginia, including transfers from out of state, is as follows:

a. All children (through grade three), within 60 business days of initial enrollment in a public school, shall be screened in speech, voice, and language to determine if a referral for an evaluation for special education and related services is indicated.

b. All children, within 60 business days of initial enrollment, shall be screened in the areas of vision and hearing to determine if a referral for an evaluation for special education and related services is indicated. In addition, the vision and hearing of all children in grades three, seven, and 10 shall be screened during the school year.

*COV §22.1-273*

c. All children (through grade three), within 60 business days of initial enrollment, shall be screened for fine and gross motor functions to determine if a referral for an evaluation for special education and related services is indicated.

d. The screening may take place up to 60 business days prior to the start of school. The local school division may recognize screenings reported as part of the child's pre-school physical examination required under the Code of Virginia if completed within the above prescribed time line.

*COV § 22.1-270*

e. Specific measures or instruments will be employed which use:

(1) Both observational and performance techniques; and

(2) Techniques which guarantee nondiscrimination.

f. Children who fail any of the above screenings may be rescreened after 60 business days if the original results are not considered valid.

g. Children shall be referred to the special education administrator or designee no more than five business days after screening or rescreening if results suggest that a referral for evaluation for special education and related services is indicated. The referral shall include the screening results.

*COV § 22.1-273; 34 CFR 300.125 (3)*

2. Each local school division shall establish and maintain screening procedures to assure the identification of children with suspected disabilities residing within its jurisdiction and requiring special education. The local school division shall provide all applicable procedural safeguards. These include the following:

- a. Written notice to parents of the scheduled screening and, if the child fails the screening, the results of the screening;
- b. Confidentiality; and
- c. Maintenance of the student's scholastic record.

3. A child study committee shall be established in each school to review records and other performance evidence of the children referred through a screening process, or by school staff, the parent or parents, or other individuals.

a. All referrals to the child study committee shall be made to the principal or designee. The committee shall include:

- (1) The referring source, as appropriate (except if inclusion of referring source would breach the confidentiality of the child);
- (2) The principal or designee;
- (3) At least one teacher; and
- (4) At least one specialist.

b. The child study committee shall meet within 10 business days following receipt of the referral. The purpose of the meeting is to identify and recommend strategies to address the child's learning, behavior, communication, or development. This does not preclude the child study committee from making a referral for evaluation for special education and related services prior to implementing strategies. The child study committee shall refer the child to the special education administrator or designee within five business days following the determination by the committee that the child should be referred for an evaluation for special education and related services.

c. Actions by the committee shall be documented in writing and shall include information upon which a decision was based.

#### **8 VAC 20-80-52. Referral for evaluation.**

A. All children, aged two to 21, inclusive, whether enrolled in public school or not, who are suspected of having a disability, shall be referred to the special education administrator or designee, who shall initiate the process of determining eligibility for special education and related services.

1. Referrals may be made by any source, including a child study committee, school staff, a parent or parents, or other individuals.

2. If the referral is from a child study committee, it shall be made within five business days following the determination by the committee that the child should be referred for evaluation for special education and related services. In addition, the child study committee shall report, in writing, on strategies implemented to address the child's learning, behavior, communication, or development.

3. If the referral is from any other source, the referring party shall inform the special education administrator or designee of why an evaluation is requested and efforts that have been made to address the concerns. The referral may be made in oral or written form.

B. Procedures for referral for evaluation.

1. Upon receipt of the referral, the special education administrator, or designee, shall:

- a. Record the date, reason for referral, and names of the person or agency making the referral;
- b. Implement procedures for maintaining the confidentiality of all data; and
- c. Provide procedural safeguards to inform the parent or parents in the parent's or parents' native language or primary mode of communication, unless it is clearly not feasible to do so, about:
  - (1) The referral for evaluation and its purpose; and
  - (2) Parental rights with respect to evaluation and other procedural safeguards.

2. The special education director or designee may request a review by a child study committee to determine whether an evaluation will be completed if the referral comes from a source other than the child study committee. This request for review shall occur within five business days of the receipt of the referral for evaluation. The decision about whether to evaluate shall be made within 10 business days of the request for review.

3. If the child study committee is meeting following the request for review to determine if an evaluation will be completed, the committee shall include all members of the team that meets to determine needed evaluation data, including the parent or parents (e.g., the IEP team and other qualified professionals as appropriate).

4. The meeting of the child study committee shall not:

- a. Deny or delay the parent's or parents' right to a due process hearing to contest the decision not to evaluate;
- b. Deny or delay the parent's or parents' right to make another referral in the future; or
- c. Delay the evaluation of a child who is suspected of having a disability.

5. The child study committee may attempt classroom interventions during the evaluation process, but such interventions cannot delay the evaluation.

6. If the decision is to not evaluate, prior written notice, in accordance with 8 VAC 20-80-70 C, shall be given to the parent or parents, including their right to appeal the decision through due process hearing procedures. *34 CFR § 300.503*

7. If the decision is to conduct an evaluation, the special education administrator or designee shall:

*34 CFR § 300.505*

a. Secure informed consent from the parent or parents for the evaluation.

(1) Parental consent is not required before reviewing existing data as part of an evaluation or administering a test or other evaluation that is administered to all children, unless parental consent is required before administration to all children.

(2) If the parent or parents refuse consent for an initial evaluation, the local educational agency may continue to pursue the evaluations by using due process or mediation procedures.

b. Provide all notice and procedural safeguards required by 8 VAC 20-80-70.

c. Inform the parent or parents of the procedures for the determination of needed evaluation data and request any evaluation information the parent or parents may have.

d. Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days after the referral for evaluation is received by the special education administrator or designee.

**8 VAC 20-80-54. Evaluation.**

A. Each local educational agency shall ensure that all children, aged two to 21, inclusive, who reside within its jurisdiction, who may have disabilities, and who may need special education and related services, are evaluated, including children who: *34 CFR § 300.121 (e); 300.125*

1. Are highly mobile, such as migrant and homeless children;
2. Attend private schools, including children who are home instructed or home tutored;
3. Are suspected of being children with disabilities and are in need of special education, even though they are advancing from grade to grade; and
4. Are under age 18, suspected of having a disability and in need of special education, and who are incarcerated for 10 or more days in a regional or local jail in its jurisdiction.

B. Each local educational agency shall conduct a full, individual, and initial evaluation in accordance with subsections D and E of this section before the initial provision of special education and related services to a child with a disability.

C. The local educational agency shall establish procedures for the initial evaluation and reevaluation of referred children which include the following:

1. Written prior notice (in the parent's or parents' native language or mode of communication unless it is clearly not feasible to do so);
2. Notice of procedural safeguards;
3. Opportunity for independent educational evaluation;
4. Informed parental consent;
5. Assignment of a surrogate parent when necessary;
6. Opportunity for an impartial due process hearing;
7. Confidentiality;
8. Opportunity for examination of records; and
9. Nondiscriminatory testing.

D. Determination of needed evaluation data.

*34 CFR § 300.533*

1. Review of existing evaluation data. As part of an initial evaluation, if appropriate, a group that is comprised of the same individuals as an IEP team, and other qualified professionals, as appropriate, shall:

a. Review existing evaluation data on the child, including:

- (1) Evaluations and information provided by the parent or parents of the child;
- (2) Current classroom-based assessments and observations;
- (3) Observations by teachers and related services providers; and

b. On the basis of that review and input from the child's parent or parents, identify what additional data, if any, are needed to determine:

- (1) Whether the child has a particular disability or disabilities;
- (2) The present levels of performance and educational needs of the child;
- (3) Whether the child needs special education and related services; and
- (4) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

2. Conduct of review. The group completing the review may conduct its review without a meeting. The local educational agency shall provide notice to ensure that the parent or parents have the opportunity to participate in the review. If there is a meeting, the local educational agency shall provide notice of the meeting early enough to ensure that the parent or parents will have an opportunity to participate. The notice must indicate the purpose, date, time, and location of the meeting and who will be in attendance.

3. Need for additional data. The local educational agency shall administer tests and other evaluation materials as may be needed to produce the data identified in this subsection.

4. This process shall be considered the evaluation if no additional data are needed.

E. The local educational agency shall establish policies and procedures to ensure that the following requirements are met. *34 CFR § 300.532 (a) - (j)*

1. Tests and other evaluation materials used to assess a child under this chapter:

- a. Are selected and administered so as not to be discriminatory on a racial or cultural basis; and
- b. Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so.

2. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

3. A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent or parents, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability and the content of the child's IEP.

4. The assessment tools and strategies used provide relevant information that directly assists persons in determining the educational needs of the child.

5. Any standardized tests that are given to a child:

- a. Have been validated for the specific purpose for which they are used; and
- b. Are administered by knowledgeable and trained personnel in accordance with the instructions provided by the producer of the tests.

6. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) must be included in the evaluation report.

7. Any nonstandardized test, administered by qualified personnel, may be used to assist in determining whether the child is a child with a disability and the contents of the child's IEP.

8. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

9. Tests are selected and administered so as to best ensure that if a test is administered to a child with impaired sensory, motor, or communication skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, motor, or communication skills (except where those skills are the factors that the test purports to measure).

10. The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

11. Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

12. No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for a child.

13. If the evaluation requires assessments in more than one area relating to the suspected disability, a group of persons, including at least one teacher or other specialist with knowledge in the area of the suspected disability, shall complete the assessments.

14. For a child suspected of having a specific learning disability, the evaluation must include an observation of academic performance in the regular classroom by at least one team member other than the child's regular teacher. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age. *34 CFR §300.542*

15. Each child is assessed by a qualified professional in all areas relating to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and adaptive behavior. This may include educational, medical, sociocultural, psychological, or developmental assessments. *34 CFR §300.532*

a. The hearing of each child suspected of having a disability shall be screened during the eligibility process prior to initial determination of eligibility for special education and related services.

*COV § 22.1-214*

b. A complete audiological assessment, including tests which will assess inner and middle ear functioning, shall be performed on each child who is hearing impaired or deaf or who fails two hearing screening tests.

*COV §22.1-214*

16. A written copy of the evaluation report shall be provided to the parent or parents. The report shall be available to the parent or parents no later than two business days before the meeting to determine eligibility. *34 CFR §300.534*

#### F. Reevaluation.

1. A reevaluation shall be conducted: *34 CFR §§ 300.533; 300.536*

- a. If conditions warrant a reevaluation;
- b. If the child's parent, parents, or teacher requests a reevaluation; or
- c. At least once every three years.

2. Review of existing evaluation data. As part of a reevaluation, the local educational agency shall ensure that a group comprised of the same individuals as an IEP team, and other qualified professionals, as appropriate: *34 CFR §300.533*

a. Reviews the reason for the reevaluation request, if applicable, and existing evaluation data on the child, including:

- (1) Evaluations and information provided by the parent or parents of the child;
- (2) Current classroom-based assessments and observations; and
- (3) Observations by teachers and related services providers; and

b. Identifies, on the basis of the above review, and input from the child's parent or parents, what additional data, if any, are needed to determine:

- (1) Whether the child continues to have a particular disability or has any additional disabilities;
- (2) The present levels of performance and educational needs of the child;
- (3) Whether the child continues to need special education and related services; and
- (4) Whether any modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

3. Conduct of review. The group may conduct its review without a meeting.

4. Need for additional data. The local educational agency shall administer tests and other evaluation materials, in accordance with subsection E of this section, as may be needed to produce the data identified in subdivision 2 b of this subsection.

5. Requirements if additional data are not needed.

a. If the determination identified in subdivision 2 of this subsection is that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency shall notify the child's parent or parents of (i) that determination and the reasons for it; and (ii) the right of the parent or parents to request an evaluation to determine whether, for purposes of services under this chapter, the child continues to be a child with a disability.

b. The local educational agency is not required to conduct the evaluation to gather additional information to determine whether the child continues to have a particular disability, unless requested to do so by the child's parent or parents.

c. This process shall be considered the evaluation if no additional data are needed.

G. Notice and parental consent.

*34 CFR §§ 300.503; 300.504; 300.505*

1. The local educational agency shall provide notice in accordance with 8 VAC 20-80-70 C.

2. Parental consent is required before gathering new evaluation data.

a. If for a reevaluation the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent and the child's parent or parents have failed to respond, the local educational agency shall proceed as if consent has been given by the parent or parents. Reasonable measures include providing notice to the parent or parents in writing (or by telephone or in person with proper documentation). *34 CFR § 300.505 (c)*

b. If the parent or parents refuse consent for an evaluation or reevaluation, the local educational agency may continue to pursue those evaluations by using due process or mediation procedures.

3. Parental consent is not required before:

a. Review of existing data as part of an evaluation or reevaluation; or

b. A teacher's or related service provider's observations or ongoing classroom evaluations.

H. Timelines.

1. Evaluations shall be completed within 65 business days of the receipt of the referral by the special education administrator or designee.

2. If the reevaluation is the evaluation required every three years, the evaluation shall be initiated no less than 65 business days prior to the third anniversary of the date eligibility was last determined. The evaluation shall be completed in 65 business days.

### **8 VAC 20-80-56. Eligibility.**

A. The local educational agency shall establish procedures to ensure that the decision regarding eligibility for special education and related services is made:

1. Within 65 business days after the referral for evaluation is received for an initial evaluation;

2. No later than the third anniversary of the date the child was last found eligible for special education and related services; or

3. Within 65 business days after the parent or parents are notified of the decision not to reevaluate, made in accordance with 8 VAC 20-80-54 F.

B. Upon completing the administration of tests and other evaluation materials or after determining that additional data are not needed, in accordance with 8 VAC 20-80-54 D, a group of qualified professionals and the parent or parents of the child must determine whether the child is, or continues to be, a child with a disability. *34 CFR §300.534*

1. The group shall include, but not be limited to, local educational agency personnel representing the disciplines providing assessments, the special education administrator or designee, and the parent or parents.
  2. At least one local educational agency representative in the group must have either assessed or observed the child.
  3. The group may be an IEP team, as defined in 8 VAC 20-80-62 C, as long as the above requirements and notice requirements of 8 VAC 20-80-70 C are met.
  4. If determining whether a child suspected of having a specific learning disability is a child with a disability, as defined by this chapter, the group shall include: *34 CFR §300.540*
    - a. The child's regular teacher:
      - (1) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of that age; or
      - (2) For a child less than school age, an individual qualified to teach a child of that age; and
    - b. At least one person qualified to conduct diagnostic examinations of children, such as school psychologist, speech-language pathologist, teacher of specific learning disabilities, or teacher of remedial reading.
- C. Procedures for determining eligibility.
1. In interpreting evaluation data for the purpose of determining if a child is a child with a disability and determining the educational needs of the child, the local educational agency shall: *34 CFR §300.535 (a)*
    - a. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, adaptive behavior; and
    - b. Ensure that information from all these sources is documented and carefully considered.
  2. The group shall provide procedural safeguards in determining eligibility and in ensuring the confidentiality of records. *34 CFR §300.534*
  3. A child may not be determined to be eligible under this chapter if the determinant factor is lack of instruction in reading or math or limited English proficiency and the child does not otherwise meet the eligibility criteria.
  4. The group making the decision regarding the child's eligibility shall work toward consensus. The local educational agency shall obtain parental consent for the initial eligibility determination. Thereafter, parental consent shall be secured for any change in identification. The group shall have a written summary that consists of the basis for making its determination as to the eligibility of the child for special education and related services. This summary shall be signed by each group member present. The written summary shall be maintained in the child's scholastic record.
  5. The local educational agency shall provide a copy of the documentation of the determination of eligibility to the parent or parents.
  6. The summary statement of the group's essential deliberations shall be forwarded to the IEP team upon determination of eligibility. The summary statement may include other recommendations.
    - a. Each group member shall certify in writing whether the report reflects his conclusions. If the group does not reach consensus and the report does not reflect a particular member's conclusion, then the group member must submit a separate statement presenting that member's conclusions.
    - b. No changes shall be made to a child's eligibility for special education and related services without parental consent.
  7. For a child suspected of having a specific learning disability, the documentation of the group's determination of eligibility must also include a statement of: *34 CFR § 300.543*

- a. Whether the child has a specific learning disability;
- b. The basis for making the determination;
- c. The relevant behavior noted during the observation of the child;
- d. The relationship of the behavior to the child's academic functioning;
- e. The educationally relevant medical findings, if any;
- f. Whether there is a severe discrepancy between the child's achievement and ability that is not correctable without special education and related services; and
- g. The determination of the group concerning the effects of any environmental, cultural, or economic disadvantage.

D. Eligibility for related services. A child with a disability must be found eligible for special education in order to receive related services. Related services are those supportive services that are required to assist a child with a disability to benefit from special education. Once a child is found eligible for special education, decisions about the need for related services are made by and added to the IEP by the IEP team. An evaluation may be conducted, if needed. *34 CFR § 300.24*

E. Two-year-old children, previously served by Part C. A child, aged two, previously participating in early intervention services assisted under Part C of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) shall meet the requirements of this chapter to be determined eligible under Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.). For a child served by Part C after age 2, and whose third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin.

F. Eligibility as a child with a developmental delay.

*Licensure Regulations for School Personnel (8 VAC 20-21-10 et seq.); 34 CFR § 300.313*

1. The local educational agency shall include developmental delay as one of the disability categories when determining whether a preschool child, aged two to five, inclusive, is eligible under this chapter. The local educational agency may include developmental delay as one of the disability categories when determining whether a school-aged child, aged five to eight, inclusive, is eligible under this chapter.
2. Other disability categories may be used for any child with a disability aged two to eight, inclusive. However, teacher assignment requirements specified in 8 VAC 20-80-45 shall apply.

G. Criteria for determining the existence of a specific learning disability. The group may determine that a child has a specific learning disability if: *34 CFR §300.541*

1. The child does not achieve commensurate with the child's age and ability levels in one or more of the areas listed in subdivision 2 of this subsection if provided with learning experiences appropriate for the child's age and ability levels; and
2. The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:
  - a. Oral expression;
  - b. Listening comprehension;
  - c. Written expression;
  - d. Basic reading skill;
  - e. Reading comprehension;
  - f. Mathematical calculations; or
  - g. Mathematical reasoning.

3. The group may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

- a. A visual, hearing, or motor impairment;
- b. Mental retardation;
- c. Emotional disturbance; or
- d. Environmental, cultural, or economic disadvantage.

H. Nothing in this chapter requires that children be identified by their disability, as long as each child has a disability under this chapter and by reason of that disability needs special education and related services and is regarded as a child with a disability. Children with disabilities may be identified as having more than one disability. *34 CFR §300.125 (d)*

I. Children found not eligible for special education. Information relevant to instruction for a child found not eligible for special education shall be provided to the child's teachers or any appropriate committee. Parental consent to release information shall be secured for children in private schools, as necessary.

J. If the determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with this chapter. *34 CFR §300.535 (b)*

K. Child's status; previous enrollment in special education.

1. If a child with a disability has been receiving special education from one local educational agency in Virginia and transfers to another, the new local educational agency is responsible for ensuring that the child has available special education and related services in conformity with the existing IEP.

*34 CFR Appendix A, Question 17; OSEP Memorandum 96-5*

a. The local educational agency shall adopt and implement the existing IEP of the former local educational agency with consent of the parent or parents or develop a new IEP for the child. The new local educational agency may provide interim services agreed to by both the parent or parents and the local educational agency.

b. If the parent or parents and the local educational agency are unable to agree on interim services, the local educational agency must implement the existing IEP until a new IEP is developed and implemented.

2. When a child with a disability under the Individual with Disabilities Education Act (20 USC § 1400 et seq.) transfers to a local educational agency in Virginia from another state, the Virginia local educational agency must decide whether it will adopt the most recent evaluation and IEP developed for the child by the local educational agency in the previous state. The Virginia local educational agency must determine, as an initial matter, whether it believes that the child has a disability and whether the most recent evaluation of the child conducted by the local educational agency in the previous state and the IEP developed by that local educational agency meet the requirements of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) and this chapter. *34 CFR Appendix A, Question 17; OSEP Memorandum 96-5*

a. If the local educational agency accepts the determination made by the local educational agency that the child has a disability in the previous state and adopts that local educational agency's evaluation, the Virginia local educational agency must provide notice to the child's parent or parents in accordance with 8 VAC 20-80-70.

b. If the local educational agency determines that the IEP developed by the school division in the previous state meets the requirements of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) and this chapter, the local educational agency shall:

(1) Serve the child consistent with the IEP if a copy of the IEP is available, if the parent or parents consent to the implementation of the IEP, and if the local educational agency believes the IEP is appropriate for the child; or

(2) Conduct an IEP meeting without undue delay if the parent or parents and local educational agency are not satisfied with the IEP developed for the child in the previous state or a revision to the IEP is indicated for other reasons, in no case later than 30 calendar days after the date the local educational agency determined that it would accept the evaluation and eligibility determination from

the previous state. The most recent IEP must be implemented until the new IEP is developed and agreed upon.

c. If the local educational agency does not adopt the previous state's evaluation of the transferring child or does not receive a copy of the evaluation, the local educational agency shall provide proper notice, initiate evaluation procedures, and conduct the evaluation in accordance with this chapter.

(1) During the evaluation, the child shall receive services in accordance with the existing IEP, excluding the sections of the IEP that are not in accordance with this chapter. The local educational agency shall inform the parent or parents of the sections of the existing IEP that are not in accordance with this chapter.

(2) Once the evaluation is completed and eligibility has been determined, an IEP meeting must be held without undue delay, but in no case later than 30 calendar days after the date the child is determined to be eligible, to develop an appropriate IEP for the child.

d. If the child's parent or parents disagree with the local educational agency's evaluation or proposed IEP, they may initiate a due process hearing. During the pendency of the hearing, the child may be placed as described in subdivision 2 c of this subsection in the program developed by the IEP team with consent of the parent or parents or in another placement agreeable to the parent or parents and local educational agency. If the parent or parents do not agree to place the child in the program proposed by the IEP team and no other interim placement can be agreed upon, the local educational agency is not required to implement the IEP developed by the school division in the previous state or to approximate the services in that IEP during the pendency of the due process proceedings.

3. When a child with a disability who was placed in a private residential school under the Comprehensive Services Act transfers to a new local school division, the new local school division, must review the current placement and adopt or revise and implement the IEP within 30 calendar days of receipt of written notification of the child's transfer. The former Comprehensive Services Act team shall be responsible for paying for services until 30 calendar days after the new Comprehensive Services Act team receives written notification of the child's residence in the new locality from the former Comprehensive Services Act team.

*CSA Implementation Manual*

#### **8 VAC 20-80-58. Termination of special education and related services.**

A. A local educational agency must evaluate a child with a disability in accordance with 8 VAC 20-80-54 before determining that the child is no longer a child with a disability under this chapter. Evaluation is not required before the termination of eligibility due to graduation with a standard or advanced studies high school diploma or reaching the age of 22.

*34 CFR § 300.534 (c)*

B. The IEP team shall terminate the child's eligibility for special education and related services.

1. Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services and if parental consent is secured.

2. A related service may be terminated during an IEP meeting without any determination that the child is no longer a child with a disability who is eligible for special education and related services. The IEP team making the determination shall include local educational agency personnel representing the related services disciplines in person, by telephone, or by other similar electronic means. Parental consent shall be secured prior to the termination of related services.

3. If the parent or parents revoke consent for the child to continue to receive special education and related services, the local educational agency must follow the procedures in 8 VAC 20-80-56 to terminate the child's eligibility or use other measures as necessary to ensure that parental revocation of consent will not result in the withdrawal of a necessary free appropriate public education for the child.

*34 CFR §§ 300.500 (a)(ii)(B); 300.534 (c)*

#### **8 VAC 20-80-60. Free appropriate public education.**

A. Age of eligibility.

1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, residing within the jurisdiction of each local educational agency. This includes children with disabilities who are in need of special education and related services even though they are advancing from grade to grade or who have been suspended or expelled from school in accordance with the provisions of 8 VAC 20-80-68. The Virginia Department of Education has a goal of providing full educational opportunity to all children with disabilities aged birth through 21, inclusive, by 2010. Each local educational agency shall establish a goal of providing a full educational opportunity for all children with disabilities from birth to 21, inclusive, residing within its jurisdiction by 2010. *COV §22.1-213; 34 CFR §§300.300; 300.304*

a. The services provided to the child under this chapter shall address all of the child's identified special education and related services needs.

b. The services and placement needed by each child with a disability to receive a free appropriate public education must be based on the child's unique needs and not on the child's disability.

2. Exceptions. The obligation to make a free appropriate public education to all children with disabilities does not apply to: *34 CFR §§ 300.122; 300.311(a)*

a. Children with disabilities who have graduated from high school with a standard or advanced studies high school diploma. This exception does not apply to students who have graduated but have not been awarded a standard or advanced studies high school diploma.

b. Children with disabilities, aged 18 to 21, inclusive, who, if in their last educational placement prior to their incarceration in an adult correctional facility, were not identified as being a child with a disability and did not have an IEP. This exception does not apply to children with disabilities, aged 18 to 21, inclusive, who had been identified as children with disabilities and had received services in accordance with their IEPs, but who left school prior to their incarceration or did not have IEPs in their last educational setting but who had actually been identified as children with disabilities under this chapter.

B. Program options. Each local school division shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to children without disabilities in the area served by the local educational agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. *34 CFR § 300.305*

C. Residential placement. If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including nonmedical care and room and board, must be at no cost to the parents of the child. *34 CFR §300.302*

D. Proper functioning of hearing aids. Each local educational agency shall ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. *34 CFR § 300.303*

E. Assistive technology. *34 CFR §300.308*

1. Each local educational agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in this chapter, are made available to a child with a disability if required as part of the child's:

a. Special education;

b. Related services; or

c. Supplementary aids and services.

2. On a case-by-case basis, the use of school-purchased or leased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.

F. Transportation. *COV §22.1-221; 34 CFR § 300.306*

1. Each child with a disability placed in an education program, including private special education day or residential placements, by the local school division shall be entitled to transportation to and from such

program at no cost if such transportation is necessary to enable such child to benefit from educational programs and opportunities. Children with disabilities and children without disabilities shall share the same transportation unless a child's IEP requires specialized transportation.

2. If the IEP team determines that a child with a disability requires accommodations or modifications to participate in transportation, the accommodations or modifications must be provided in the least restrictive environment. Transportation personnel may be on the IEP team or be consulted before any modifications or accommodations are written into the student's IEP to ensure that the modifications and accommodations do not violate any state or federal standard or any nationally recognized safety practices.

3. If a local educational agency enters an agreement with another local educational agency for the provision of special education or related services for a child with a disability, such child shall be transported to and from such program at no cost to the parent or parents.

4. If a child with a disability is placed in a the Virginia school for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton, the Virginia school shall be responsible for the provision of transportation services. When such children are educated as day students, the local school division shall be responsible for the provision of transportation services to and from school.

COV §22.1-347 C

G. Nonacademic and extracurricular services and activities.

34 CFR §§ 300.306; 300.553

1. Each local educational agency shall take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

2. Nonacademic and extracurricular services and activities may include but not be limited to counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available.

H. Physical education.

34 CFR § 300.307

1. General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving a free appropriate public education.

2. Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to children without disabilities, unless:

a. The child is enrolled full time in a separate facility; or

b. The child needs specially designed physical education, as prescribed in the child's IEP that cannot be provided in the regular physical education program.

3. Special physical education. If specially designed physical education is prescribed in a child's IEP, the local educational agency responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.

4. Education in separate facilities. The local educational agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with subdivisions 1 and 3 of this subsection.

I. Extended school year services.

34 CFR § 300.309

1. Each local educational agency shall ensure that extended school year services are available as necessary to provide a free appropriate public education, consistent with subdivision 2 of this subsection.

2. Extended school year services must be provided only if a child's IEP team determines on an individual basis in accordance with this chapter that the services are necessary for the provision of a free appropriate public education to the child.

3. In implementing the requirements of this section, a local educational agency may not:

- a. Limit extended school year services to particular categories of disability; or
- b. Unilaterally limit the type, amount, or duration of those services.

J. Children with disabilities in public charter schools.

34 CFR §§ 300.312; 300.241

- 1. Children with disabilities who attend charter schools must be served by the local school division in the same manner as children with disabilities in its other schools.
- 2. The local school division must ensure that all requirements of this chapter are met.

K. Length of school day. School-aged students with disabilities shall be provided a school day comparable in length to the day provided to school-aged students without disabilities unless their IEP specifies otherwise.

**8 VAC 20-80-62. Individualized education program.**

A. Responsibility. The local educational agency shall ensure that an IEP is developed and implemented for each child with a disability served by that local educational agency, including a child placed in a private special education school by:

34 CFR §300.341

- 1. A local school division; or
- 2. A noneducational placement by a Comprehensive Services Act team that includes the school division. The local school division's responsibility is limited to special education and related services.

B. Accountability.

1. At the beginning of each school year, each local educational agency shall have an IEP in effect for each child with a disability within its jurisdiction, with the exception of children placed in a private school by parents when a free appropriate public education is not at issue.

34 CFR § 300.342 (a)

2. Each local educational agency shall ensure that an IEP:

34 CFR § 300.342 (b)

- a. Is in effect before special education and related services are provided to an eligible child; and
- b. Is developed within 30 calendar days of the date of the initial determination that the child needs special education and related services, and is implemented as soon as possible following the IEP meeting.

3. Each local educational agency shall ensure that:

34 CFR §300.342 (b)

- a. The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and
- b. Teachers and providers are informed of:
  - (1) Their specific responsibilities related to implementing the child's IEP; and
  - (2) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

4. Each local educational agency is responsible for initiating and conducting meetings to develop, review and revise the IEP of a child with a disability.

34 CFR §300.343 (b)

5. Each local educational agency shall ensure that, within a reasonable period of time following the receipt of parental consent to an initial evaluation, the evaluation of the child, and, if determined eligible, special education and related services are made available to the child in accordance with an IEP. Each local educational agency shall ensure that a meeting to develop an IEP for the child is conducted within 30 calendar days of the date of a determination that the child needs special education and related services.

34 CFR § 300.343 (c)

6. Each local educational agency shall ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and to revise its provisions, as appropriate, to address:

- a. Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;

- b. The results of any reevaluation conducted under this chapter;
- c. Information about the child provided to or by the parent or parents;
- d. The child's anticipated needs; or
- e. Other matters.

7. Each local educational agency must provide special education and related services to a child with a disability in accordance with the child's IEP. *34 CFR §300.350 (a)*

8. Each local educational agency must make a good faith effort to assist the child to achieve the goals, including benchmarks or objectives listed in the IEP. *34 CFR § 300.350 (a)*

9. This chapter does not require that any local educational agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals, including benchmarks or objectives. However, the Virginia Department of Education and local educational agencies are not prohibited from establishing their own accountability systems regarding teacher, school, or agency performance. *34 CFR §300.350 (b)*

10. Nothing in this section limits a parent's or parents' right to ask for revisions of the child's IEP or to invoke due process procedures under 8 VAC 20-80-76 and 8 VAC 20-80-78 if the parent or parents feel that the efforts required by this chapter are not being met. *34 CFR § 300.350 (c)*

11. All IEPs developed, reviewed, or revised on or after July 1, 1998, must meet the requirements of this section. *34 CFR §300.342 (d)*

#### C. IEP team.

1. General. The local educational agency shall ensure that the IEP team for each child with a disability includes:

- a. The parent or parents of the child; *34 CFR §§ 300.344 (a), (c) (d)*
- b. At least one regular education teacher of the child (if the child is or may be participating in the regular education environment);
- c. At least one special education teacher of the child or, if appropriate, at least one special education provider of the child. For a child whose only disability is speech-language impairment, the special education provider shall be the speech-language pathologist. *Appendix A, Question 27*
- d. A representative of the local educational agency who is:
  - (1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
  - (2) Knowledgeable about the general curriculum; and
  - (3) Knowledgeable about the availability of resources of the local educational agency.

A local educational agency may designate another member of the IEP team to serve simultaneously as the agency representative if that individual meets the above criteria.

e. An individual who can interpret the instructional implications of evaluation results. This individual may be a member of the team serving in another capacity, other than the parent or the child.

f. At the discretion of the parent, parents, or local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of the knowledge or special expertise of any individual shall be made by the party (parent, parents, or local educational agency) who invited the individual to be a member of the IEP team.

g. If appropriate, the child.

h. For children who are in the custody of a local social services or other child welfare agency, the child's caseworker pursuant to the following conditions:

(1) The caseworker may not assume the role of the parent at the meeting; and 34 CFR § 300.20

(2) If the caseworker is unable to attend the meeting as scheduled, the meeting may be held without the caseworker.

2. Transition service participants. 34 CFR § 300.344 (b)

a. The local educational agency shall invite a student with a disability of any age to attend the student's IEP meeting if a purpose of the meeting will be the consideration of:

- (1) The student's transition services needs;
- (2) The needed transition services for the student; or
- (3) Both.

b. If the student does not attend the IEP meeting, the local educational agency shall take other steps to ensure that the student's preferences and interests are considered.

c. In implementing the transition requirements for a student with a disability, beginning at age 16 or younger if determined appropriate by the IEP team, the local educational agency also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the local educational agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

D. Parent participation.

1. Each local educational agency shall take steps to ensure that one or both of the parents of the child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including:

*34 CFR § 300.345 (a)*

- a. Notifying the parent or parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- b. Scheduling the meeting at a mutually agreed on time and place.

2. Notice. 34 CFR § 300.345 (b)

a. General notice. The notice given the parent or parents:

- (1) Should be in writing, but may be given by telephone or in person with proper documentation;
- (2) Shall indicate the purpose, date, time, and location of the meeting, and who will be in attendance; and
- (3) Shall inform the parent or parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child as noted in subdivision C 1 f of this section.

b. Additional notice requirements are provided if transition services are under consideration.

(1) For a student with a disability beginning at age 14 or younger, if appropriate, the notice must also:

- (a) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student; and
- (b) Indicate that the local educational agency will invite the student.

(2) For a student with a disability beginning at age 16 or younger, if appropriate, the notice must:

- (a) Indicate that a purpose of the meeting will be the consideration of needed transition services for the student;
- (b) Indicate that the local educational agency will invite the student; and
- (c) Identify any other agency that will be invited to send a representative.

c. A copy of the procedural safeguards available to the parent or parents of a child with a disability must be given to the parent or parents upon each notification of an IEP meeting in accordance with 8 VAC 20-80-70.

3. If neither parent can attend, the local educational agency shall use other methods to ensure parent participation, including individual or conference telephone calls. *34 CFR §300.345 (c)*

4. A meeting may be conducted without a parent or parents in attendance if the local educational agency is unable to convince the parent or parents that they should attend. In this case, the local educational agency must have a record of the attempts to arrange a mutually agreed on time and place, such as:

*34 CFR §300.345 (d)*

a. Detailed records of telephone calls made or attempted and the results of those calls;

b. Copies of correspondence sent to the parent or parents and any responses received; or

c. Detailed records of visits made to the parent's or parents' home or place of employment and the results of those visits.

5. The local educational agency shall take whatever action is necessary to ensure that the parent or parents understand the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. *34 CFR §300.345 (e)*

6. The local educational agency shall permit the use of audio recording devices at IEP meetings. The parent or parents shall inform the local educational agency before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. If the parent or parents do not inform the local educational agency, the parent or parents shall provide the local educational agency with a copy of the audio recording. The parent or parents shall provide their own audio equipment and materials for audio recording. If the local educational agency audio records the meetings or receives a copy of an audio recording from the parent or parents, the audio recording becomes part of the child's educational record. *34 CFR §300 Appendix A, Question 21*

7. The local educational agency may prohibit, limit or otherwise regulate the use of video recording devices at IEP meetings. If the local educational agency video records the meetings, the video recording becomes part of the child's educational record. If the local educational agency has a policy that prohibits or limits the use of video recording devices at IEP meetings:

a. That policy must provide for exceptions if they are necessary to ensure that the parent or parents understand the IEP or the IEP process or to implement other parental rights guaranteed under this chapter; and

b. The local educational agency must ensure that the policy is uniformly applied.

*34 CFR §300 Appendix A, Question 21*

8. At the IEP meeting, the IEP team shall provide the parent or parents of a child with a disability with a written description of the factors in subdivisions E 1 and E 2 of this section that will be considered during the IEP meeting. The description shall be written in language understandable by the general public and provided in the native language of the parent or parents or other mode of communication used by the parent or parents, unless it is clearly not feasible to do so.

9. The local educational agency shall give the parent or parents a copy of the child's IEP at no cost to the parent or parents. *34 CFR §300.345 (f)*

E. Development, review, and revision of the IEP.

1. In developing each child's IEP, the IEP team shall consider: *34 CFR §300.346 (a) (1)*

a. The strengths of the child and the concerns of the parent or parents for enhancing the education of their child;

b. The results of the initial or most recent evaluation of the child; and

c. As appropriate, the results of the child's performance on any general state or division-wide assessment programs.

2. The IEP team also shall:  
(b)

34 CFR § 300.346 (a) (2),

a. In the case of a child whose behavior impedes the child's learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

b. In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

c. In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;

d. Consider the communication needs of the child;

e. In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

f. Consider whether the child requires assistive technology devices and services.

3. If, in considering the special factors, the IEP team determines that a child needs a particular device or service, including an intervention, accommodation, or other program modification in order for the child to receive a free appropriate public education, the IEP team must include a statement to that effect in the child's IEP.

34 CFR § 300.346 (c)

4. The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of:

34 CFR § 300.346 (d)

a. Appropriate positive behavioral interventions and strategies for the child; and

b. Supplementary aids and services, accommodations, program modifications or supports for school personnel that will be provided for the child.

5. Nothing in this section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

34 CFR § 300.346 (e)

6. The IEP team shall consider all factors identified under a free appropriate public education in 8 VAC 20-80-60, as appropriate, and work toward consensus. If the IEP team cannot reach consensus, the local educational agency shall provide the parent or parents with prior written notice of the local educational agency's proposals or refusals, or both, regarding the child's educational placement or provision of a free appropriate public education in accordance with 8 VAC 20-80-70.

34 CFR §300, Appendix A, Question 9

F. Content of the individualized education program. The IEP for each child with a disability shall include:

1. A statement of the child's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum or, for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

34 CFR §300.347 (a) (1)

a. The statement should be written in objective measurable terms, to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included.

- b. The present level of performance should directly relate to the other components of the IEP.
2. A statement of measurable annual goals, including benchmarks or short-term objectives, related to:
- 34 CFR §300.347 (a) (2)*
- a. Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities; and
- b. Meeting each of the child's other educational needs that result from the child's disability.
3. A statement of the special education and related services and supplementary aids and services to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:
- 34 CFR § 300.347 (a) (3)*
- a. To advance appropriately toward attaining the annual goals;
- b. To be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and
- c. To be educated and participate with other children with disabilities and children without disabilities in the activities described in this section.
4. An explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and in the activities described in this section. *34 CFR §300.347 (a) (4)*
5. The following information concerning state and division-wide assessments shall be included:
- 34 CFR §§ 300.138; 300.347 (a) (5)*
- a. A statement of any individual accommodations or modifications, in accordance with the guidelines approved by the Board of Education, in the administration of state assessments of student achievement that are needed in order for the child to participate in the assessment;
- b. If the IEP team determines that the child will not participate in a particular state assessment of student achievement (or part of an assessment), a statement of:
- (1) Why that assessment is not appropriate for the child;
- (2) How the child will be assessed, including participation in the alternate assessment for those students who meet the criteria for the alternate assessment; and
- (3) How the child's nonparticipation in the assessment will impact the child's promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.
- c. A statement that the child shall participate in either the state assessment for all children that is part of the state assessment program or the state's alternate assessment;
- d. A statement of any individual accommodations or modifications approved for use in the administration of division-wide assessments of student achievement that are needed in order for the child to participate in the assessment;
- e. If the IEP team determines that the child will not participate in a particular division-wide assessment of student achievement (or part of an assessment), a statement of:
- (1) Why that assessment is not appropriate for the child;
- (2) How the child will be assessed;
- (3) How the child's nonparticipation in the assessment will impact the child's course; promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.
- f. For students still participating in the Literacy Passport Testing Program, documentation that any decision to postpone or exempt the student from participation was reviewed during the annual IEP review or sooner.

6. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. Location refers to the continuum of alternative placements in 8 VAC 20-80-64 B. 34 CFR § 300.347(a) (6)

7. A statement of: 34 CFR § 300.347 (a) (7)

a. How the child's progress toward the annual goals will be measured;

b. How the child's parent or parents will be regularly informed (through such means as periodic report cards), at least as often as the parent or parents are informed of the progress of their children without disabilities, concerning:

(1) Their child's progress toward the annual goals; and

(2) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

8. In the case of a preschool-aged child with a disability, age two (on or before September 30) through age five (on or before September 30), whose parent or parents elect to receive services under Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.), the local educational agency shall develop an IEP. 34 CFR §300.347 (c)

9. For each student with a disability, beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program). For a student pursuing a modified standard diploma, the IEP team shall consider the student's need for occupational readiness upon school completion, including consideration of courses to prepare the student as a career and technical education program completer; 34 CFR §300.347 (b) (1)

10. For each student with a disability, beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of the needed transition services for the student, including, if appropriate, a statement of interagency responsibilities or any needed linkages. Transition services shall be based on the individual student's needs, taking into account the student's preferences and interests, and include:

34 CFR §300.347 (b) (2)

a. Instruction;

b. Related services;

c. Community experiences;

d. The development of employment and other post-school adult living objectives; and

e. If appropriate, acquisition of daily living skills and functional vocational evaluation.

11. Beginning at least one year before a student reaches the age of majority, the student's IEP must include a statement that the student has been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority. 34 CFR §300.342 (c)

G. Agency responsibilities for transition services.

34 CFR § 300.348

1. If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP of a student with a disability, the local educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

2. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

H. Additional requirements for eligible students with disabilities in state, regional, or local adult or juvenile correctional facilities. 34 CFR §§300.122; 300.311 (b) & (c); 300.347 (d)

1. A representative of the state from a state, regional, or local adult or juvenile correctional facility may participate as a member of the IEP team.

2. All requirements in this section apply to students with disabilities in state, regional, or local adult or juvenile correctional facilities with the exception that the IEP team of a student with disabilities who is convicted as an adult under state law may modify the student's IEP or placement if the state has demonstrated to the IEP team a bona fide security or compelling penological interest that cannot be otherwise accommodated.

a. All requirements regarding IEP development, review, and revision in this section shall apply.

b. If such modifications are made by the IEP team, the requirements related to least restrictive environment in 8 VAC 20-80-64 do not apply.

c. IEP requirements regarding participation in state assessments, including alternate assessments, do not apply. Assessment requirements to graduate with a modified standard, standard, or advanced studies diploma shall apply.

*Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC 20-131-10 et seq.)*

d. IEP requirements regarding transition planning and transition services do not apply to students whose eligibility for special education and related services will end because of their age before they will be eligible for release from the correctional facility based on consideration of their sentence and their eligibility for early release.

#### **8 VAC 20-80-64. Least restrictive environment and placements.**

##### **A. General least restrictive environment requirements.**

1. Each local educational agency shall ensure: *34 CFR §300.550 (b)*

a. That to the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, are educated with children without disabilities; and

b. That special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

2. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other services and activities provided for children without disabilities, each local educational agency shall ensure that each child with a disability participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of the child with a disability. *34 CFR §300.553*

3. For children placed by local school divisions in public or private institutions, the local educational agency shall, where necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (See also 8 VAC 20-80-66.)

*34 CFR §§ 300.550; 300.554*

##### **B. Continuum of alternative placements.**

*34 CFR §300.551 (a), (b)*

1. Each local educational agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

2. The continuum must:

a. Include the alternative placements listed in the definition of special education (instruction in regular classes; special classes; special schools; home-based instruction; and instruction in hospitals and institutions, including Woodrow Wilson Rehabilitation Center and other state facilities); and

*COV §22.1-218*

b. Make provision for supplementary services (e.g., resource room or services or itinerant instruction) to be provided in conjunction with regular class placement. The continuum should include integrated service delivery, which occurs when some or all goals, including benchmarks and objectives, of the student's IEP are met in the general education setting with age-appropriate peers.

3. No single model for the delivery of services to any specific population or category of children with disabilities will be acceptable for meeting the requirement for a continuum of alternative placements. All placement decisions must be based on the individual needs of each child.

4. Local educational agencies shall document all alternatives considered and the rationale for choosing the selected placement.

5. Children with disabilities must be served in a program with age-appropriate peers unless it can be shown that for a particular child with a disability, the alternative placement is appropriate as documented by the IEP. *34 CFR §§ 300.555 - 556*

C. Placements. *34 CFR § 300.552*

1. In determining the educational placement of a child with a disability, including a preschool child with a disability, each local educational agency shall ensure that:

a. The placement decision is made by the IEP team in conformity with the least restrictive environment provisions of this chapter. *34 CFR §300 Appendix A, Question 37*

b. The child's placement is:

- (1) Determined at least annually;
- (2) Based on the child's IEP; and
- (3) As close as possible to the child's home.

c. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that the child would attend if a child without a disability.

d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which the child needs.

e. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

2. Home-based instruction shall be made available to children whose IEPs require the delivery of services in the home or other agreed-upon setting.

3. Homebound instruction shall be made available to children who are confined for periods that would prevent normal school attendance based upon certification of need by a licensed physician or clinical psychologist. For students eligible for special education and related services, the IEP team must revise the IEP, as appropriate, and determine the delivery of homebound services, including the number of hours of services. *Regulations Establishing Standards for Accrediting Public Schools in Virginia (8 VAC 20-131-10 et seq.)*

**8 VAC 20-80-65. Placement of children at the Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.**

A. Placements shall be made by the local school division, in accordance with the administrative policies and procedures of the Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton (Virginia schools). The Virginia schools shall determine if the student meets the admission criteria of the Virginia schools. *COV §22.1-348*

B. When an eligible child is placed in the Virginia schools, the local school divisions shall be responsible for ensuring compliance with the requirements of this chapter.

C. A contractual agreement shall be established between the Virginia schools and the local school division for each child enrolled in the Virginia schools.

1. This agreement shall include, but not be limited to:

- a. The educational services provided by each party;
- b. The responsibility for development of IEPs;

- c. The responsibility for completing evaluations and determining continuing eligibility for special education and related services; and
  - d. The responsibility for providing procedural safeguards and a free appropriate public education.
2. The Virginia schools and the local school divisions shall review the contractual agreement at least annually and revise it as necessary.
3. For students who are residential students, the respective Virginia school is responsible for transportation. For students who are day students, the placing local school division is responsible for transportation to and from the school. COV §22.1-347c

**8 VAC 20-80-66. Private school placement.**

A. Private school placement by a local school division or Comprehensive Services Act team.

- 1. When a child with a disability is placed by a local school division or is placed for noneducational reasons by a Comprehensive Services Act team that includes the school division in a private school or facility that is licensed or has a certificate to operate, the local school division shall be responsible for ensuring compliance with the requirements of this chapter, including participation in state and division-wide assessments. The local school division shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in the residential placement. 34 CFR §§ 300.349 (c); 300.401 (b)
- 2. Before a local school division places a child with a disability in a private school or facility that is licensed or has a certificate to operate, the local school division shall initiate and conduct a meeting in accordance with 8 VAC 20-80-62 to develop an IEP for the child. The local school division shall ensure that a representative of a private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by a private school or facility, including individual or conference telephone calls. 34 CFR § 300.349 (a)
- 3. When a child is presently receiving the services of a private school or facility that is licensed or has a certificate to operate, the local school division shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. 34 CFR §300.349 (a) (2)
- 4. After a child with a disability enters a private school or facility that is licensed or has a certificate to operate, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the local school division. 34 CFR §300.349 (b) (1)
- 5. If the private school or facility initiates and conducts these meetings, the local school division shall ensure that the parent or parents and a local school division representative: 34 CFR §300.349 (b)
  - a. Are involved in any decision affecting the child's IEP;
  - b. Agree to any proposed changes in the program before those changes are implemented; and
  - c. Are involved in any meetings that are held regarding reevaluation.
- 6. If the private school or facility implements a child's IEP, responsibility for compliance with the requirements regarding procedural safeguards, IEPs, assessment, reevaluation, and termination of services remains with the local school division. 34 CFR §300.349 (c)
- 7. When a child with a disability is placed by a local school division or a Comprehensive Services Act team in a private school or facility that is licensed or has a certificate to operate, all rights and protections under this chapter shall be extended to the child. 34 CFR § 300.121
- 8. If the parent or parents request a due process hearing to challenge the child's removal from a placement that was made for noneducational reasons by a Comprehensive Services Act team, the child shall remain in the previous IEP placement agreed upon by the parent or parents and the local educational agency prior to placement by the Comprehensive Services Act team. 34 CFR §300.2 (c)

9. When a child with a disability is placed in a private school or facility that is out of state, the placement shall be processed through the Interstate Compact on the Placement of Children, in accordance with the Code of Virginia. COV § 22.1-218.1

B. Placement of children by parents if a free appropriate public education is at issue.

1. This section does not require a local school division to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the local school division made a free appropriate public education available to the child and the parent or parents elected to place the child in a private school or facility. 34 CFR §300.403 (a)

2. Disagreements between a parent or parents and a local school division regarding the availability of an appropriate program for the child and the question of financial responsibility are subject to the due process procedures of 8 VAC 20-80-76. 34 CFR §300.403 (b)

3. If the parent or parents of a child with a disability, who previously received special education and related services under the authority of a local school division, enroll the child in a private preschool, elementary, middle, or secondary school without the consent of or referral by the local school division, a court or a hearing officer may require the local school division to reimburse the parent or parents for the cost of that enrollment if the court or hearing officer finds that the local school division had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the standards of the Virginia Department of Education that apply to education provided by the Virginia Department of Education and provided by the local school division. 34 CFR § 300.403 (c)

4. The cost of reimbursement described in this section may be reduced or denied: 34 CFR §300.403 (d)

a. If (i) at the most recent IEP meeting that the parent or parents attended prior to removal of the child from the public school, the parent or parents did not inform the IEP team that they were rejecting the placement proposed by the local school division to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense or (ii) at least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parent or parents did not give written notice to the local school division of the information described above;

b. If, prior to the parent's or parents' removal of the child from the public school, the local school division informed the parent or parents, through the notice requirements described in 8 VAC 20-80-76, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent or parents did not make the child available for the evaluation; or

c. Upon a judicial finding of unreasonableness with respect to actions taken by the parent or parents.

5. Notwithstanding the above notice requirement, the cost of reimbursement may not be reduced or denied for the parent's or parents' failure to provide the notice to the local school division if:

*34 CFR §300.403 (e)*

a. The parent is illiterate or cannot write in English;

b. Compliance with this section would likely result in physical or serious emotional harm to the child;

c. The school prevented the parent or parents from providing the notice; or

d. The parent or parents had not received notice of the notice requirement in this section.

C. Child find for private school, home-instructed, and home-tutored children with disabilities.

*COV §22.1-254.1; 34 CFR § 300.451*

1. Each local school division shall locate, identify, and evaluate all private school children with disabilities, including children attending religious schools, who reside in the jurisdiction of the local school division. The provisions of this subsection shall apply to children who are home-instructed and home-tutored in accordance with the Code of Virginia. The activities undertaken to carry out this responsibility for private

school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools.

2. Each local school division shall consult with appropriate representatives of private school children with disabilities on how to carry out the child find activities.

D. Placement of children by parents when a free appropriate public education is not at issue. To the extent consistent with their number and location in the state, provision must be made for the participation of private school children with disabilities in the program carried out under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) by providing them with special education and related services in accordance with a services plan developed and implemented under this subsection. 34 CFR §300.452 (a)

1. The provisions of this subsection shall apply to children who are home instructed or home tutored in accordance with the Code of Virginia.

2. Each local school division shall ensure that a services plan is developed and implemented for each private school child with a disability who has been designated to receive special education and related services under this part. 34 CFR §300.452 (b)

3. Expenditures. 34 CFR §300.453

a. To meet the requirement of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.), each local school division must spend the following on providing special education and related services to private school children with disabilities:

(1) For children, aged three to 21, inclusive, an amount that is the same proportion of the local school division's total subgrant under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) as the number of private school children with disabilities, aged three to 21, inclusive, residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction, aged three to 21, inclusive; and

(2) For children, aged three to five, inclusive, an amount that is the same proportion of the local school division total subgrant under the act as the number of private school children with disabilities, aged three to five, inclusive, residing in its jurisdiction, is to the total number of children with disabilities in its jurisdiction, aged three to five, inclusive.

b. Each local school division shall consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities and ensure that the count is conducted on December 1. The child count must be used to determine the amount that the local school division must spend on providing special education and related services to private school children with disabilities in the subsequent fiscal year.

c. Expenditures for child find activities, including evaluation and eligibility, described in 8 VAC 20-80-50 through 8 VAC 20-80-56, may not be considered in determining whether the local school division has met the expenditure requirements of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

d. Local school divisions are not prohibited from providing services to private school children with disabilities in excess of those required by this section.

4. Services determined. 34 CFR § 300.454

a. No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Decisions about the services that will be provided to private school children with disabilities must be made in accordance with subdivisions 4 b and c of this subsection.

b. Consultation with representatives of private school children with disabilities.

(1) Each local school division shall consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding, the number of private school children with disabilities, the needs of private school children with disabilities, and their

location to decide (i) which children will receive services; (ii) what services will be provided; (iii) how and where the services will be provided; and (iv) how the services provided will be evaluated.

(2) Each local school division shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.

(3) The consultation required by this section must occur before the local school division makes any decision that affects the opportunities of private school children with disabilities to participate in services.

(4) The local school division shall make the final decisions with respect to the services to be provided to eligible private school children.

c. Services plan for each child served under this section. If a child with a disability is enrolled in a religious or other private school and will receive special education or related services from a local school division, the local school division shall:

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child; and

(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

5. Services provided.

34 CFR §300.455

a. The services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

b. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

c. No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.

d. Services provided in accordance with a services plan.

(1) Each private school child with a disability who has been designated to receive services under this subsection must have a services plan that describes the specific special education and related services that the local school division will provide to the child in light of the services that the local school division has determined it will make available to private school children with disabilities.

(2) The services plan must, to the extent appropriate, meet the requirements for the content of the IEP (8 VAC 20-80-62 F) with respect to the services provided, and be developed, reviewed, and revised consistent with 8 VAC 20-80-62 B 1, B 2, B 3, B 4, C, D, and E.

6. Location of services. Services provided to a private school child with a disability may be provided on-site at the child's private school, including a religious school, to the extent consistent with law.

34 CFR §300.456 (a)

7. Transportation.

34 CFR § 300.456 (b)

a. If necessary for the child to benefit from or participate in the services provided under this part, a private school child with a disability must be provided transportation:

(1) From the child's school or the child's home to a site other than the private school; and

(2) From the service site to the private school or to the child's home depending on the timing of the services.

b. Local school divisions are not required to provide transportation from the child's home to the private school.

c. The cost of the transportation described in this subsection may be included in calculating whether the local school division has met the requirement of this section.

8. Procedural safeguards, due process, and complaints. *34 CFR §300.457 (a), (b) and (c)*

a. Due process inapplicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do not apply to complaints that a local school division has failed to meet the requirements of this subsection, including the provision of services indicated on the child's services plan.

b. Due process applicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do apply to complaints that a local school division has failed to meet the requirements of child find (including the requirements of referral for evaluation, evaluation, and eligibility) for private school children with disabilities (subsection C of this section).

c. State complaints. Complaints that the Virginia Department of Education or local school division has failed to meet the requirements of this section may be filed under the procedures in 8 VAC 20-80-78.

9. Separate classes prohibited. A local school division may not use funds available under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) for classes that are organized separately on the basis of school enrollment or religion of the students if (i) the classes are at the same site and (ii) the classes include students enrolled in public schools and students enrolled in private schools.

*34 CFR §300.458*

10. Requirement that funds not benefit a private school. A local school division may not use funds provided under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to finance the existing level of instruction in a private school or to otherwise benefit the private school. The local school division shall use funds provided under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to meet the special education and related services needs of students enrolled in private schools, but not for the needs of a private school or the general needs of the students enrolled in the private school.

*34 CFR § 300.459*

11. Use of public school personnel. A local school division may use funds available under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to make public school personnel available in nonpublic facilities to the extent necessary to provide services under this section for private school children with disabilities and if those services are not normally provided by the private school.

*34 CFR § 300.460*

12. Use of private school personnel. A local school division may use funds available under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to pay for the services of an employee of a private school to provide services to a child enrolled in private school by the child's parent or parents, if the employee performs the services outside of the employee's regular hours of duty and the employee performs the services under public supervision and control.

*34 CFR § 300.461*

13. Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities.

*34 CFR §300.462*

a. A local school division must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the local school division acquires with funds under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) for the benefit of private school children with disabilities.

b. The local school division may place equipment and supplies in a private school for the period of time needed for the program.

c. The local school division shall ensure that the equipment and supplies placed in a private school are used only for purposes of special education and related services for children with disabilities and can be removed from the private school without remodeling the private school facility.

d. The local school division shall remove equipment and supplies from a private school if (i) the equipment and supplies are no longer needed for purposes of special education and related services for children with disabilities or (ii) removal is necessary to avoid unauthorized use of the equipment and supplies for purposes other than special education and related services for children with disabilities.

e. No funds under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) may be used for repairs, minor remodeling, or construction of private school facilities.

**8 VAC 20-80-68. Discipline procedures.**

A. General. A student with a disability shall be entitled to the same due process rights that all students are entitled to under the Code of Virginia and the local educational agency's disciplinary policies and procedures.

*COV §22.1-277*

B. Short-term removals.

*34 CFR §§ 300.121; 300.519*

1. A student with a disability may be removed from the student's current educational setting up to 10 cumulative school days in a school year for any violation of school rules to the extent removal would be applied to a student without a disability.

2. A student with a disability may be removed from the student's current educational setting for a period of time that cumulatively exceeds 10 school days in a school year for separate incidents of misconduct as long as the removals do not constitute a pattern. If the removals do constitute a pattern, the requirements of subsection C of this section apply.

a. Isolated, short-term suspensions for unrelated instances of misconduct may not be considered a pattern.

b. These removals do not constitute a change in placement.

C. Long-term removals.

*34 CFR § 300.121*

1. For purposes of removals of a student with a disability from the student's current educational placement, a change in placement occurs if:

*34 CFR § 300.519*

a. The removal is for more than 10 consecutive school days; or

b. A series of removals constitutes a pattern because the removals cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

2. Authority of school personnel.

*34 CFR § 300.520 and 522*

a. A student with a disability may be removed consistent with subdivision 1 of this subsection for any violation of school rules to the extent removal would be applied to students without disabilities.

b. School personnel may remove a student with a disability to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than 45 calendar days, if:

(1) The student carries a weapon to or possesses a weapon at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or

(2) The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education. For purposes of this part, the following definitions apply:

(a) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in § 202(c) of the Controlled Substances Act at 21 USC § 812 (c).

(b) Illegal drug means a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of federal law.

(c) Weapon has the meaning given the term "dangerous weapon" in 18 USC § 930 (g), paragraph 2, as well as any weapon defined as a dangerous weapon in the Code of Virginia.

c. The interim alternative educational setting must be determined by an IEP team. The interim alternative educational setting must be selected so as to enable the student to:

- (1) Continue to progress in the general curriculum, although in another setting;
- (2) Continue to receive those services and modifications including those described in the student's current IEP that will enable the student to meet the IEP goals; and
- (3) Include services and modifications that address the behavior and are designed to prevent the behavior from recurring.

d. The local educational agency shall ensure that the following procedures are implemented either before or not later than 10 business days after either first removing the student for more than 10 school days in a school year or commencing a removal that constitutes a change in placement under subdivision 1 of this subsection, including placements in interim alternative educational settings:

- (1) The IEP team shall convene to develop a behavioral assessment plan if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral plan for the student before the behavior resulted in the removal described in subdivision 1 of this subsection.
- (2) The functional behavioral assessment may be a review of existing data that can be completed at the IEP meeting. Parental consent is not necessary to review existing data.
- (3) The IEP team shall reconvene as soon as practicable after developing the assessment plan and completing the assessments required by the plan. The IEP team shall develop and implement appropriate behavioral interventions to address the behavior.
- (4) If the student had a behavioral intervention plan before engaging in the behavior, the IEP team shall convene to review the plan and its implementation and modify the plan and its implementation, as necessary, to address the behavior.

e. If the student who has a behavioral intervention plan and who has been removed from the student's current educational placement for more than 10 school days in a school year is subjected to a further removal that does not constitute a change in placement under subdivision 1 of this subsection, the IEP team shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed in the student's behavioral intervention plan, the IEP team shall meet and modify the plan and its implementation as necessary.

3. Services during periods of disciplinary removal.

*34 CFR §300.121 (d)*

- a. The local educational agency is not required to provide services during the first 10 school days in a school year that a student with a disability is removed from the student's current educational setting if services are not provided to a student without a disability who has been similarly removed.
- b. For a subsequent removal that is less than 10 school days in a school year, but exceeds 10 cumulative school days of removal, and which does not constitute a change in placement under subdivision 1 of this subsection, the local educational agency shall provide services to the extent determined necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals of the student's IEP.
- c. The procedures for determining services under subdivision 3 b of this subsection for periods of removals are as follows:
  - (1) For removals for more than 10 school days in a school year which do not constitute a change in placement, school personnel, in consultation with the student's special education teacher, make the service determinations.
  - (2) For removals that constitute a change in placement, the IEP team determines what services are needed.

4. Authority of the hearing officer.

*34 CFR §§300.521; 300.526; 300.528*

- a. A local educational agency may request an expedited due process hearing under the Virginia Department of Education's due process hearing procedures to effect a change in placement of a student with a disability for not more than 45 calendar days if the local educational agency believes that

the student's behavior is likely to result in injury to self or others. This procedure may be repeated as necessary.

b. The hearing officer under 8 VAC 20-80-76 may order a change in the placement to an appropriate interim alternative educational setting for not more than 45 calendar days if the local educational agency has demonstrated by substantial evidence (beyond a preponderance of the evidence) that maintaining the current placement of the student is substantially likely to result in injury to the student or others. The hearing officer must:

- (1) Consider the appropriateness of the student's current placement;
- (2) Consider whether the local educational agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and
- (3) Determine that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets the requirements of subdivision 2 c of this subsection.

c. A local educational agency may ask the hearing officer for an extension of 45 calendar days for the interim alternative educational setting of a student with a disability when school personnel believe that the student's return to the regular placement would be dangerous to the student or others.

5. Manifestation determination.

*34 CFR §§ 300.523; 300.521 (d); 300.524*

a. Manifestation determinations are required if the local educational agency is contemplating a removal that constitutes a change in placement, including removal to an interim alternative educational setting, for a student with a disability who has violated any rule or code of conduct of the local educational agency that applies to all students. The local educational agency shall notify the parent or parents of that decision and provide the parent or parents with the procedural safeguards notice not later than the date on which the decision to take the action is made.

b. The IEP team and other qualified personnel shall convene immediately, if possible, but not later than 10 school days after the date on which the decision to take the action is made. The other qualified personnel may include individuals who are knowledgeable about how a student's disability can impact on behavior or on understanding, who understand the impact and consequences of behavior, or who are knowledgeable about the student and the student's disability. The IEP team and other qualified personnel shall review the relationship between the student's disability and the behavior subject to the disciplinary action.

(1) The IEP team and other qualified personnel may determine the behavior was not a manifestation of the student's disability only if the team and other qualified personnel first consider, in terms of the behavior subject to the disciplinary action, all relevant information, including:

- (a) Evaluation and diagnostic results, including the results of other relevant information supplied by the parents of the student;
- (b) Observations of the student; and
- (c) The student's IEP and placement.

(2) The IEP team and other qualified personnel shall then determine that:

- (a) In relationship to the behavior subject to the disciplinary action, the student's IEP and placement were appropriate, and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement;
- (b) The student's disability did not impair the student's ability to understand the impact and consequences of the behavior subject to disciplinary action; and
- (c) The student's disability did not impair the student's ability to control the behavior subject to the disciplinary action.

c. If the IEP team and other qualified personnel determine that the standards in subdivision 5 b (2) of this subsection were not met, the behavior must be considered a manifestation of the student's disability. If the behavior is a manifestation of the student's disability:

(1) The student can be removed from the student's educational placement only through the IEP process or through placement in an interim alternative educational setting as provided in subdivision C 2 b, C 4, or C 7 c of this section; and

(2) The IEP team shall develop or modify strategies, including positive behavioral interventions and supports to address the behavior.

d. The review by the IEP team and other qualified personnel to determine manifestation may be conducted at the same IEP meeting to develop or review the student's behavioral intervention plan, as long as the local educational agency notified the parent or parents of the purposes of the meeting.

e. If the IEP team and other qualified personnel determine deficiencies in the student's IEP or placement, the local educational agency shall take immediate steps to remedy those deficiencies through the IEP process.

f. If the IEP team and other qualified personnel determine that the behavior of the student with a disability was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to a student without a disability may be applied to the student with a disability in the same manner in which the procedures would be applied to a student without a disability.

(1) If the local educational agency initiates disciplinary procedures, providing due process rights that are applicable to all students, the local educational agency shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(2) The IEP team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

6. Parent appeal.

*34 CFR §§300.525; 300.528*

a. If the student's parent or parents disagree with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under these disciplinary procedures, the parent or parents may request an expedited due process hearing.

b. In accordance with the Virginia Department of Education's due process hearing procedures, an expedited hearing shall be scheduled in response to the parent's or parents' request. In reviewing the decision with respect to the manifestation determination, the hearing officer shall determine whether the local educational agency has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of subdivision 5 of this subsection. In reviewing the decision to place a student in an interim alternative educational setting, the hearing officer shall apply the standards in subdivision 4 of this subsection.

7. Placement during appeals.

*34 CFR §300.526*

a. If the parent or parents request a hearing to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period not to exceed 45 calendar days, unless the parent or parents and local educational agency agree otherwise.

b. If the student is placed in an interim alternative educational setting and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of the due process proceedings, the student shall remain in the current placement (the student's placement prior to the interim alternative educational setting), except as provided in subdivision 7 c of this subsection.

c. If school personnel maintain that it is dangerous for the student to be in the current placement (the student's placement prior to the interim alternative educational setting) during the pendency of the due

process proceedings, the local educational agency may request an expedited due process hearing under the procedures contained in subdivision 4 a of this subsection.

d. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in subdivision 4 b of this subsection.

e. A placement ordered by the hearing officer under the procedures for an expedited due process hearing may not be longer than 45 calendar days. If the local educational agency believes that it is dangerous for the student to return to the current placement, the local educational agency may request of the hearing officer to extend the placement for longer than 45 calendar days, in accordance with subdivision 4 b of this subsection.

8. Protection for students not yet eligible for special education and related services. *34 CFR §300.527*

a. A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates any rule or code of conduct of the local educational agency, including behavior described in subdivisions 2 and 4 of this subsection, may assert any of the protections provided in this chapter if the local educational agency had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

b. A local educational agency shall be deemed to have knowledge that a student is a student with a disability if:

(1) The parent or parents of the student have expressed concern in writing (or orally if the parent or parents do not know how to write or have a disability that prevents a written statement) to school personnel that the student is in need of special education and related services;

(2) The behavior or performance of the student demonstrates the need for these services;

(3) The parent or parents of the student have requested an evaluation of the student to be determined eligible for special education and related services; or

(4) A teacher of the student or school personnel have expressed concern about the behavior or performance of the student to the director of special education of the local educational agency or to other personnel in accordance with the local educational agency's child find or special education referral system.

c. A local educational agency would not be deemed to have knowledge that a student is a student with a disability if the local educational agency:

(1) Conducted an evaluation and determined that the student was not a student with a disability; or

(2) Determined that an evaluation was not necessary and provided notice to the student's parent or parents of its determination in accordance with the notice requirements found in 8 VAC 20-80-70.

d. If the local educational agency does not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures applied to a student without a disability who engages in comparable behaviors.

e. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under subdivisions 2 and 4 of this subsection, the evaluation must be conducted in an expedited manner.

(1) Until the evaluation is completed, the student remains in the educational placement determined by the school personnel, which can include suspension or expulsion without educational services.

(2) If the student is determined to be a student with a disability, taking into consideration information from the evaluations conducted by the local educational agency and information provided by the parent or parents, the local educational agency shall provide special education and related services as required for a student with a disability who is disciplined.

9. Expedited due process hearing.

*34 CFR §§ 300.528; 300.521; 300.525*

a. Under subdivision 4 of this subsection, a local educational agency may request an expedited due process hearing if there is substantial evidence that maintaining the current placement for a student with a disability is substantially likely to result in injury to the student or others.

b. Under subdivision 6 of this subsection, the parent or parents may request an expedited due process hearing if the parent or parents disagree with the manifestation determination or any decision regarding placement under this section.

c. The Virginia Department of Education shall establish procedures for expedited due process hearings to include the following requirements:

(1) Timelines for conducting the hearing and issuing of the decision consistent with the requirements found in 8 VAC 20-80-76; and

(2) Description of any appeal requirements consistent with the requirements found in 8 VAC 20-80-76.

10. Referral to and action by law enforcement and judicial authorities.

34 CFR §300.529

a. Nothing in this chapter prohibits a local educational agency from reporting a crime by a student with a disability to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability to the extent such action applies to a student without a disability.

b. In reporting the crime, the local educational agency shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom school personnel report the crime. Transmission of such records shall be in accordance with requirements under the Management of the Student's Scholastic Record in the Public Schools of Virginia (8 VAC 20-150-10 et seq.).

**8 VAC 20-80-70. Procedural safeguards.**

A. Opportunity to examine records; parent participation.

1. Procedural safeguards. Each local educational agency shall establish, maintain, and implement procedural safeguards as follows: 34 CFR §§ 300.500 (a); 300.501 (a) (b), (c)

a. The parent or parents of a child with a disability shall be afforded an opportunity to:

(1) Inspect and review all education records with respect to (i) the identification, evaluation, and educational placement of the child; and (ii) the provision of a free appropriate public education to the child as set forth in the Management of the Student's Scholastic Record in the Public Schools of Virginia (8 VAC 20-150-10 et seq.)

(2) Participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

b. Parent participation in meetings.

(1) Each local educational agency shall provide notice to ensure that the parent or parents of a child with a disability have the opportunity to participate in meetings described in subdivision 1 a (2) of this subsection, including notifying the parent or parents of the meeting early enough to ensure that they will have an opportunity to participate. The notice must: (i) indicate the purpose, date, time, and location of the meeting and who will be in attendance; (ii) inform the parent or parents that at their discretion or at the discretion of the local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, may participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child; and (iii) inform the parent that the determination of the knowledge or special expertise shall be made by the party who invited the individual.

(2) A meeting does not include informal or unscheduled conversations involving local educational agency personnel and conversations on issues such as teaching methodology, lesson plans, or

coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that local educational agency personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.

c. Parent involvement in placement decisions. Each local educational agency shall ensure that the parent or parents of each child with a disability are members of:

- (1) The IEP team that makes decisions on the educational placement of their child or any Comprehensive Services Act team that makes decisions on the educational placement of their child;
- (2) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the local educational agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing;
- (3) A placement decision may be made by the IEP or Comprehensive Services Act team without the involvement of the parent or parents, if the local educational agency is unable to obtain the parent's or parents' participation in the decision. In this case, the local educational agency shall have a record of its attempt to ensure the parent's or parents' involvement, including information that is consistent with the requirements for parent participation in an IEP meeting in 8 VAC 20-80-62 D.
- (4) The local educational agency shall make reasonable efforts to ensure that the parent or parents understand and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for a parent or parents with deafness, or whose native language is other than English.

B. Independent educational evaluation.

1. General.

*34 CFR §300.502*

a. The parent or parents of a child with a disability shall have the right to obtain an independent educational evaluation of the child.

b. The local educational agency shall provide to the parent or parents of a child with a disability, upon request, information about where an independent educational evaluation may be obtained and the applicable criteria for independent educational evaluations.

2. Parental right to evaluation at public expense.

*34 CFR § 300.502 (b), (e)*

a. The parent or parents have the right to an independent educational evaluation at public expense if the parent or parents disagree with an evaluation obtained by the local educational agency.

b. If the parent or parents request an independent educational evaluation at public expense, the local educational agency must, without unnecessary delay, either:

(1) Initiate a due process hearing to show that its evaluation is appropriate; or

(2) Ensure that an independent educational evaluation is provided at public expense, unless the local educational agency demonstrates in a hearing that the evaluation obtained by the parent or parents does not meet local educational agency criteria.

c. If the local educational agency initiates a hearing and the final decision is that the local educational agency's evaluation is appropriate, the parent or parents still have the right to an independent educational evaluation, but not at public expense.

d. If the parent or parents request an independent educational evaluation, the local educational agency may ask the reasons for the parent's or parents' objection to the public evaluation. However, the explanation by the parent or parents may not be required and the local educational agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

e. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the local educational agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's or parents' right to an independent educational evaluation. Except for the criteria, a local educational agency may not impose conditions or timelines related to obtaining an independent educational evaluation.

3. Parent-initiated evaluations. The results of an independent educational evaluation whether or not at public expense: *34 CFR §300.502 (c)*

- a. Must be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding a free appropriate public education for the child; and
- b. May be presented as evidence at a hearing under 8 VAC 20-80-76.

C. Prior notice by the local educational agency; content of notice.

1. Written notice must be given to the parent or parents of a child with a disability within a reasonable time before the local educational agency: *34 CFR §300.503 (a) (1)*

- a. Proposes to initiate or change the identification, evaluation, or educational placement (including graduation with a standard or advanced studies diploma) of the child, or the provision of a free appropriate public education for the child; or
- b. Refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education for the child.

2. If the notice relates to an action proposed by the local educational agency that also requires parental consent, the local educational agency may give notice at the time it requests parental consent.

*34 CFR §300.503 (a) (2)*

3. The notice shall include: *34 CFR §300.503 (b)*

- a. A description of the action proposed or refused by the local educational agency;
- b. An explanation of the local educational agency's proposal or refusal to take the action;
- c. A description of any other options the local educational agency considered and the reasons for the rejection of those options;
- d. A description of each evaluation procedure, test, record, or report the local educational agency used as a basis for the proposed or refused action;
- e. A description of any other factors that are relevant to the local educational agency's proposal or refusal;
- f. A statement that the parent or parents of a child with a disability have protection under the procedural safeguards of this chapter and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
- g. Sources for the parent or parents to contact in order to obtain assistance in understanding the provisions of this section.

4. The notice shall be (i) written in language understandable to the general public and (ii) provided in the native language of the parent or parents or other mode of communication used by the parent or parents, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent or parents is not a written language, the local educational agency shall take steps to ensure that:

*34 CFR §300.503 (c)*

- a. The notice is translated orally or by other means to the parent or parents in their native language or other mode of communication;
- b. The parent or parents understand the content of the notice; and

c. There is written evidence that the requirements of subdivisions a and b of this subdivision have been met.

D. Procedural safeguards notice.

1. A copy of the procedural safeguards available to the parent or parents of a child with a disability must be given to the parent or parents at a minimum upon: *34 CFR §§300.504 (a); 523 (a) (1)*

- a. Initial referral for evaluation;
- b. Each notification of an IEP meeting;
- c. Reevaluation of the child;
- d. Receipt of a request for a due process hearing; and
- e. Notification of a decision to take disciplinary action, in accordance with 8 VAC 20-80-68 C 5.

2. The procedural safeguards notice must include a full explanation of all of the procedural safeguards relating to: *34 CFR §300.504 (b)*

- a. Independent educational evaluation;
- b. Prior written notice;
- c. Parental consent;
- d. Access to educational records;
- e. Opportunity to present complaints and to initiate due process hearings;
- f. The child's placement during pendency of due process proceedings;
- g. Procedures for students who are subject to placement in an interim alternative educational setting;
- h. Requirements for unilateral placement by parents of children in private schools at public expense;
- i. Mediation;
- j. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
- k. Civil actions;
- l. Attorneys' fees; and
- m. The state complaint procedures, including a description of how to file a complaint and the timelines under those procedures.

3. The notice required under this subsection must meet the prior notice requirements regarding understandable language in subsection C of this section. *34 CFR § 300.504 (c)*

E. Parental consent.

1. General. Informed parental consent shall be obtained before:

- a. Conducting an initial evaluation or reevaluation, including a functional behavioral assessment if such assessment is not a review of existing data conducted at an IEP meeting; *34 CFR § 300.505 (a) (1)*
- b. Any change in identification of a child with a disability;
- c. Initial provision of special education and related services to a child with a disability and any revision to the child's IEP services; *34 CFR § 300.505 (a) (1)*
- d. Any partial or complete termination of special education and related services, except for graduation with a standard or advanced studies diploma; and
- e. Accessing a parent's or parents' private insurance proceeds in accordance with this chapter.

*34 CFR § 300.142 (f)*

2. Consent for initial evaluation may not be construed as consent for initial placement. *34 CFR § 300.505 (a) (2)*
3. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). *34 CFR §300.505 (a)*
4. Parental consent is not required before: *34 CFR §300.505 (a)*
- a. Review of existing data as part of an evaluation or a reevaluation, including a functional behavioral assessment;
  - b. Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of the parent or parents of all children;
  - c. Administration of a test or other evaluation that is used to measure progress on the child's goals and benchmarks or objectives and is included in the IEP; or
  - d. A teacher's or related service provider's observations or ongoing classroom evaluations.
5. If the parent or parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the local educational agency may use mediation or due process hearing procedures to pursue the evaluation. *34 CFR §300.505 (b)*
6. Failure to respond to request for reevaluation. *34 CFR §300.505 (c)*
- a. Informed parental consent need not be obtained for reevaluation if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent or parents have failed to respond.
  - b. To meet the reasonable measures requirement, the local educational agency must have a record of its attempts to secure the consent, such as:
    - (1) Detailed records of telephone calls made or attempted and the results of those calls;
    - (2) Copies of correspondence sent to the parent or parents and any responses received; and
    - (3) Detailed records of visits made to the parent's or parents' home or place of employment and the results of those visits.
7. A local educational agency may not use a parent's or parents' refusal to consent to one service or activity to deny the parent, parents, or child any other service, benefit, or activity of the local educational agency, except as provided by this chapter. *34 CFR §300.505 (e)*
- F. Parental rights regarding use of public or private insurance. *34 CFR §300.142*
1. Each local educational agency using Medicaid or other public insurance to pay for services required under this chapter, as permitted under the public insurance program, shall:
- a. Provide notice to the parent or parents that:
    - (1) The parent or parents are not required to sign up for public insurance in order for their child to receive a free appropriate public education;
    - (2) The parent or parents are not required to incur out-of-pocket expenses, such as payment of a deductible or copay amount incurred in filing a claim for services; and
    - (3) The local educational agency may not use a child's benefits under a public insurance program if that use would (i) decrease available lifetime coverage or any other insured benefit; (ii) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school; (iii) increase premiums or lead to the discontinuation of insurance; or (iv) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.
  - b. Obtain parental consent to release educational records to the public insurance program for billing purposes in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia (8 VAC 20-150-10 et seq.).

2. Each local educational agency using private insurance to pay for services required under this chapter shall:

- a. Obtain parental consent each time the local education agency proposes to access the parent's private insurance proceeds.
- b. Obtain parental consent and inform the parent that their refusal to permit the local educational agency to access their private insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent or parents each time it proposes to access the parent's or parents' private insurance.
- c. Obtain parental consent to release educational information to the private insurance company for billing purposes in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia (8 VAC 20-150-10 et seq.).

G. Confidentiality of information.

1. Access rights.

34 CFR §300.562

- a. The local educational agency shall permit a parent or parents to inspect and review any education records relating to their children that are collected, maintained, or used by the local educational agency under this chapter. The local educational agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing in accordance with 8 VAC 20-80-76 and 8 VAC 20-80-68, and in no case more than 45 days after the request has been made.
- b. The right to inspect and review education records under this section includes:
  - (1) The right to a response from the local educational agency to reasonable requests for explanations and interpretations of the records;
  - (2) The right to request that the local educational agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
  - (3) The right to have a representative of the parent inspect and review the records.
- c. A local educational agency may presume that a parent has authority to inspect and review records relating to his children unless the local educational agency has been advised that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.

2. Record of access. Each local educational agency shall keep a record of parties, except parents and authorized employees of the local educational agency, obtaining access to education records collected, maintained, or used under Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.), including the name of the party, the date of access, and the purpose of the access.

34 CFR §300.563

3. Record on more than one child. If any education record includes information on more than one child, the parent or parents of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information requested.

34 CFR §300.564

4. List of types and locations of information. Each local educational agency shall provide on request to a parent or parents a list of the types and locations of education records collected, maintained, or used by the local educational agency.

34 CFR §300.565

5. Fees.

34 CFR §300.566

- a. Each local educational agency may charge a fee for copies of records that are made for a parent or parents under this chapter if the fee does not effectively prevent the parent or parents from exercising their right to inspect and review those records.
- b. A local educational agency may not charge a fee to search for or to retrieve information under this section.

6. Amendment of records at parent's request. 34 CFR §300.567
- a. A parent or parents who believe that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the local educational agency that maintains the information to amend the information.
  - b. The local educational agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
  - c. If the local educational agency decides to refuse to amend the information in accordance with the request, it shall inform the parent or parents of the refusal and advise the parent or parents of the right to a hearing under subdivision 7 of this subsection.
7. Opportunity for a hearing. The local educational agency shall provide on request an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. 34 CFR §300.568
8. Results of hearing. 34 CFR §300.569
- a. If, as a result of the hearing, the local educational agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.
  - b. If, as a result of the hearing, the local educational agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the child's education records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
  - c. Any explanation placed in the records of the child under this section must:
    - (1) Be maintained by the local educational agency as part of the records of the child as long as the record or contested portion is maintained by the local educational agency; and
    - (2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.
9. Hearing procedures. A hearing held under subdivision 7 of this subsection must be conducted in accordance with the procedures under 34 CFR 99.22 of the Family Educational Rights and Privacy Act (20 USC § 1232g). 34 CFR §300.570
10. Consent. 34 CFR §§300.500 (b) (3); 300.571
- a. Except as to disclosure to law enforcement and judicial authorities in accordance with 8 VAC 20-80-68, for which parental consent is not required under the Family Educational Rights and Privacy Act (20 USC § 1232g), parental consent must be obtained before personally identifiable information is:
    - (1) Disclosed to anyone other than officials of the local educational agencies collecting, maintaining, or using the information under this chapter, subject to subdivision 10 b of this subsection; or
    - (2) Used for any purpose other than meeting a requirement of this chapter.
  - b. A local educational agency subject to the Family Education Rights and Privacy Act (20 USC § 1232g) may not release information from education records to any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) without parental consent unless authorized to do so under the Family Education Rights and Privacy Act.
  - c. In the event that a parent refuses to provide consent under this section, a local educational agency shall use established policies and procedures.
11. Safeguards. 34 CFR §300.572
- a. Each local educational agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

b. One official at each local educational agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

c. All persons collecting, maintaining, or using personally identifiable information must receive training or instruction on Virginia's policies and procedures for ensuring confidentiality of information.

d. Each local educational agency shall maintain for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

12. Destruction of information. *34 CFR §300.573*

a. The local educational agency shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the child.

b. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

c. The local educational agency shall comply with the Records Retention and Disposition Schedule of the Library of Virginia.

**8 VAC 20-80-72. Transfer of rights to students who reach the age of majority.**

A. All rights accorded to the parent or parents under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) transfer to children upon the age of majority (age 18), including those students who are incarcerated in an adult or juvenile federal, state, regional, or local correctional institution. *34 CFR §300.517*

B. Notification.

1. The local educational agency shall notify the parent or parents and the student of the following:

*34 CFR §30.517*

a. That educational rights under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) will transfer from the parent or parents to the student upon the student reaching the age of majority. Such notification must be given at least one year prior to the student's eighteenth birthday; and

b. That procedures exist for appointing the parent or parents or, if the parent or parents are not available, another appropriate individual to represent the educational interests of the student throughout the student's eligibility for special education and related services if the student is determined not to have the ability to provide informed consent with respect to the educational program as specified in subsection C of this section.

2. The local educational agency shall include a statement on the IEP (beginning at least one year before the student reaches the age of majority) that the student has been informed of the rights that will transfer to the student on reaching the age of 18. *34 CFR §300.347 (c)*

3. The local educational agency shall provide any further notices required under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to both the student and the parent or parents.

4. The local educational agency may continue to invite the parent or parents, as appropriate, as bona fide interested parties knowledgeable of the student's abilities, to participate in meetings where decisions are being made regarding their adult student's educational program.

5. The adult student may invite the student's parent or parents to participate in meetings where decisions are being made regarding the student's educational program.

C. A student who has reached the age of 18 years shall be presumed to be a competent adult, and thus all rights under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) shall transfer to the adult student, unless one of the following actions has been taken:

1. The adult student is declared legally incompetent or legally incapacitated by a court of competent jurisdiction and a representative has been appointed by the court to make decisions for the student;

2. The adult student designates, in writing, by power of attorney or similar legal document, another competent adult to be the student's agent to receive notices and to participate in meetings and all other procedures related to the student's educational program. A local educational agency shall rely on such designation until notified that the authority to act under the designation is revoked, terminated, or superseded by court order or by the adult student;

3. The adult student is certified, according to the following procedures, as unable to provide informed consent. Any adult student who is found eligible for special education pursuant to this chapter and does not have a representative appointed to make decisions on the adult student's behalf by a court of competent jurisdiction may have an educational representative appointed based on the following certification procedure to act on the student's behalf for all matters described in this chapter and to exercise rights related to the student's scholastic record. An educational representative may be appointed based on the following conditions and procedures: *34 CFR §300.517 (b)*

a. Two professionals (one from list one and one from list two, as set out in the following subdivisions,) shall, based on a personal examination or interview, certify in writing that the adult student is incapable of providing informed consent and that the student has been informed of this decision:

(1) List one includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a physician's assistant whose certification is countersigned by a supervising physician; or (iii) a certified nurse practitioner.

(2) List two includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a licensed clinical psychologist; (iii) a licensed clinical social worker; (iv) an attorney who is qualified to serve as a guardian ad litem for adults under the rules of the Virginia Supreme Court; or (v) a court-appointed special advocate for the adult student.

b. The individuals who provide the certification in subdivision 3 a of this subsection may not be employees of the local educational agency currently serving the adult student or be related by blood or marriage to the adult student.

c. Incapable of providing informed consent, as used in this section, means that the individual is unable to:

(1) Understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis;

(2) Make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis; or

(3) Communicate such understanding in any meaningful way.

d. The certification that the adult student is incapable of providing informed consent may be made as early as 60 calendar days prior to the adult student's eighteenth birthday or 65 business days prior to an eligibility meeting if the adult student is undergoing initial eligibility for special education services.

e. The certification shall state when and how often a review of the adult student's ability to provide informed consent shall be made and why that time period was chosen.

f. The adult student's ability to provide informed consent must be recertified at any time that the previous certifications are challenged. Challenges can be made by the student or by anyone with a bona fide interest and knowledge of the adult student, except that challenges cannot be made by employees of local educational agencies. Challenges must be provided in writing to the local educational agency's administrator of special education who then must notify the adult student and current appointed representative.

(1) Upon receipt of a written challenge to the certification by the adult student, the local educational agency may not rely on an educational representative, appointed pursuant to subsection D of this section, for any purpose until a designated educational representative is affirmed by a court of competent jurisdiction;

(2) Upon receipt of a written challenge to the certification by anyone with a bona fide interest and knowledge of the adult student, the local educational agency may not rely on an educational representative, appointed pursuant to subsection D of this section for any purpose until a more current written certification is provided by the appointed educational representative. Certifications provided after a challenge are effective for 60 calendar days, unless a proceeding in a court of competent jurisdiction is filed challenging and requesting review of the certifications. The local educational agency shall not rely upon the designated educational representative until the representative is affirmed by the court; or

4. The adult student, based on certification by written order from a judge of competent jurisdiction, is admitted to a facility for the training and treatment of the mentally retarded in accordance with § 37.1-65.1 of the Code of Virginia or in a coma and eligible for admission to a state hospital in accordance with § 37.1-65.3 of the Code of Virginia. The state-operated program serving the adult student may rely on the judicial certification and appoint an educational representative to act on the student's behalf during the student's stay at the state-operated program.

D. If the local educational agency receives written notification of the action in subdivision C 3 of this section or if the state-operated program receives the judicial certification in subdivision C 4 of this section, the local educational agency shall designate the parent or parents of the adult student to act as an educational representative of the adult student (unless the student is married, in which event the student's adult spouse shall be designated as educational representative).

1. If the parent or parents or adult spouse is not available and competent to give informed consent, the administrator of special education or designee shall designate a competent individual from among the following:

- a. An adult brother or sister;
- b. An adult aunt or uncle; or
- c. A grandparent.

2. If no family member from the previous categories is available and competent to serve as the adult student's educational representative, then a person trained as a surrogate parent shall be appointed to serve as the educational representative by the local educational agency.

#### **8 VAC 20-80-74. Mediation.**

A. Each local educational agency shall ensure that the parent or parents of a child with a disability are informed of the option of mediation to resolve disputes involving the local educational agency's proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, at a minimum, whenever a due process hearing is requested.

*34 CFR §300.506 (a)*

B. The local educational agency shall use the Virginia Department of Education's mediation process to resolve such disputes. The procedures shall ensure that the process is:

*34 CFR §300.506 (b) (1)*

1. Voluntary on the part of both the local educational agency and parent;
2. Not used to deny or delay a parent's or parents' right to a due process hearing or to deny any other rights afforded under this chapter; and
3. Conducted by a qualified and impartial mediator who is trained in effective mediation techniques and is knowledgeable in laws and regulations relating to the provision of special education and related services, from a list maintained by the Virginia Department of Education.

C. The local educational agency may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parent or parents, with a disinterested party who is under contract with a parent training and information center or community parent resource center in Virginia established under §1482 or §1485 of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.); or an appropriate alternative dispute resolution entity.

*34 CFR §300.506 (d)*

1. The purpose of the meeting is to explain the benefits of and encourage the parents to use the process.

2. The local educational agency may not deny or delay a parent's or parents' right to a due process hearing if the parent or parents choose not to participate in this meeting.

D. In accordance with the Virginia Department of Education's procedures: *34 CFR §300.506 (b) (2) & (3)*

1. The Virginia Department of Education shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services;

2. The mediator shall be chosen on a rotation basis; and

3. The Virginia Department of Education shall bear the cost of the mediation process, including costs in subsection C of this section.

E. The mediation process shall: *34 CFR §300.506 (b) (4), (b) (5), & (b) (6)*

1. Be scheduled in a timely manner and held in a location that is convenient to the parties to the dispute;

2. Conclude with a written mediation agreement if an agreement is reached by the parties to the dispute; and

3. Guarantee that discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. Parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the mediation process.

F. An individual who serves as a mediator: *34 CFR §300.506 (c)*

1. May not be an employee of any local educational agency or the Virginia Department of Education if it is providing direct services to a child who is the subject of the mediation process;

2. Must not have a personal or professional conflict of interest; and

3. Is not an employee of the local educational agency or the Virginia Department of Education solely because the person is paid by the agency to serve as a mediator.

### **8 VAC 20-80-76. Due process hearing.**

A. The Virginia Department of Education administers a special education due process hearing system that provides procedures for the training of hearing officers, requests for a hearing, appointment of hearing officers, the management and monitoring of hearings, and the administration of the hearing system. The Virginia Department of Education is responsible for the operation of the due process system; however, the local educational agency shares responsibility for the hearing process by ensuring the timely appointment of officers, communicating with the Virginia Department of Education, assisting with the hearing, and implementing the hearing officer's decision. A hearing officer's decision may be appealed directly to any state court of competent jurisdiction or to a district court of the United States.

*COV §22.1-214; 34 CFR §§300.507 (a) (b); 300.525; 300.526*

B. Basis for due process hearing request.

1. Either a parent or parents or a local educational agency may request a due process hearing when a disagreement arises regarding any of the following:

a. Identification of a child with a disability;

b. Evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation);

c. Educational placement and services of the child; and

d. Provision of a free appropriate public education to the child.

2. A local educational agency may initiate a due process hearing to resolve a disagreement when the parent or parents withhold consent for an action that requires parental consent to provide services to a student who has been identified as a student with a disability or who is suspected of having a disability.

3. In circumstances involving disciplinary actions, the parent or parents of a student with a disability may request an expedited due process hearing if the parent or parents disagree with:

- a. A determination that the child's behavior was not a manifestation of the child's disability; or
- b. Any decision regarding placement under the disciplinary procedures.

4. The local educational agency may request an expedited hearing if the school division maintains that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative setting) during the pendency of the due process proceedings.

C. Procedure for requesting a due process hearing.

*34 CFR §300.506; 300.507 (c) (a)*

1. A request for a hearing shall be made in writing to the local educational agency, with a copy to the Virginia Department of Education. If the request is received solely by the Virginia Department of Education, the Virginia Department of Education shall immediately notify the local educational agency by telephone or by facsimile and forward a copy of the request to the local educational agency within one day of the Virginia Department of Education's receipt, including those cases where mediation is requested. The request for a hearing shall be kept confidential by the local educational agency and the Virginia Department of Education.

2. The notice of request must include the following information:

- a. The name of the child;
- b. The address of the residence of the child;
- c. The name of the school the child is attending;
- d. A description of the nature of the child's problem relating to the proposed or refused initiation or change, including facts relating to the problem; and
- e. A proposed resolution of the problem to the extent known and available to the parent or parents at the time of the notice.

3. The local educational agency shall upon receipt of a request for a due process hearing, inform the parent or parents of the availability of mediation described in 8 VAC 20-80-74 and of any free or low-cost legal and other relevant services available in the area. The local educational agency must also provide the parent or parents with a procedural safeguards notice.

4. The local educational agency shall appoint the hearing officer within five business days of the request for a hearing. The local educational agency contacts the Supreme Court of Virginia to secure the name of a hearing officer, contacts the hearing officer to confirm availability, and upon acceptance, appoints the hearing officer in writing, with a copy to the Virginia Department of Education. In the case of an expedited hearing, the local educational agency must appoint the hearing officer within three business days of the request for a hearing.

D. Assignment of hearing officer.

*COV §9-6.14:14.1; 34 CFR §300.508*

1. A hearing officer is appointed to a case from a list maintained by the Supreme Court of Virginia.

2. Upon a request by the local educational agency, the Supreme Court identifies a hearing officer from its list and provides the name to the local educational agency. If the first person selected is unavailable or disqualified, the local educational agency shall immediately request another name to ensure that a timely appointment is made.

3. Upon request, the Virginia Department of Education shall share information on qualifications of the hearing officer with the parent or parents and the local educational agency, and either party has two business days to object to the appointment on the basis of conflict of interest.

4. A hearing shall not be conducted by a person who:

- a. Has a personal or professional interest which would conflict with that person's objectivity in the hearing;

b. Is an employee of the Virginia Department of Education or the local educational agency that is involved in the education and care of the child. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he is paid by the agency to serve as a hearing officer.

c. Represents schools or parents in any matter involving special education or disability rights, or is an employee of any parent rights agency or organization, or disability rights agency or organization.

5. If a hearing officer recuses himself or is otherwise disqualified, the local educational agency shall ensure that another hearing officer is promptly appointed.

E. Child's status during administrative or judicial proceedings.

*34 CFR §§300.516; 300.526*

1. Except as provided in 8 VAC 20-80-68 C 4, during the pendency of any administrative or judicial proceeding, the child must remain in the current educational placement unless the parent or parents of the child and local educational agency agree otherwise; or

2. If the proceeding involves an application for initial admission to public school, the child, with the consent of the parent or parents, must be placed in the public school until the completion of all the proceedings; or

3. If the decision of a hearing officer agrees with the child's parent or parents that a change of placement is appropriate, that placement shall be treated as an agreement between the local educational agency and the parent or parents for the purposes of maintaining the child's placement during the pendency of any administrative or judicial appeal proceeding; or

4. The child's placement during administrative or judicial proceedings regarding a disciplinary action by the local educational agency shall be in accordance with 8 VAC 20-80-68; or

5. The child's placement during administrative or judicial proceedings regarding a placement for noneducational reasons by a Comprehensive Services Act team shall be in accordance with 8 VAC 20-80-66 A 8.

F. Rights of parties in the hearing.

*34 CFR §300.509*

1. Any party to a hearing has the right to:

a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

b. Present evidence and confront, cross examine, and request that the hearing officer compel the attendance of witnesses;

c. Move that the hearing officer prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing or in the case of an expedited hearing, two business days before the hearing;

d. Obtain a written or, at the option of the parent or parents, electronic, verbatim record of the hearing; and

e. Obtain written or, at the option of the parent or parents, electronic findings of fact and decisions.

2. Additional disclosure of information shall be given as follows:

a. At least five business days prior to a nonexpedited hearing and two business days prior to an expedited hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing; and

b. A hearing officer may bar any party that fails to comply with the disclosure requirements from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

3. Parental rights at hearings.

a. A parent or parents involved in a hearing must be given the right to:

- (1) Have the child who is the subject of the hearing present; and
- (2) Open the hearing to the public.

b. The record of the hearing and the findings of fact and decisions must be provided at no cost to the parent or parents.

G. Responsibilities of the Virginia Department of Education. The Virginia Department of Education shall:

*34 CFR §§300.507; 300.508; 300.509; 300.510*

1. Maintain and monitor the due process hearing system and establish procedures for its operation;
2. Ensure that the local educational agency discharges its responsibilities in carrying out the requirements of state and federal statutes and regulations;
3. Develop and disseminate a model form to be used by the parent or parents to give notice of the following when filing a request for due process hearing: the name of the child; the address of the residence of the child; the name of the school the child is attending; a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and a proposed resolution of the problem to the extent known and available to the parent or parents at the time of the notice;
4. Ensure that the hearing is conducted by individuals who are impartial and who are not employees of the Virginia Department of Education or the local educational agency providing education or care of the child, or by anyone with a personal or professional interest that would conflict with his objectivity in the case;
5. Maintain and ensure that each local educational agency maintains a list of persons who serve as hearing officers. This list shall include a statement of the qualifications of each officer;
6. Notify the Supreme Court of the receipt of either the hearing officer's written decision or other conclusion of the case; and
7. Provide findings and decisions of all due process hearings to the state advisory committee and to the public after deleting any personally identifiable information.

H. Responsibilities of the parent. In a due process hearing, the parent or parents shall: *34 CFR §300.509*

1. Decide whether the hearing will be open to the public;
2. Make timely and necessary responses to the hearing officer personally or through counsel or other authorized representatives;
3. Assist in clarifying the issues for the hearing and participate in the prehearing conference scheduled by the hearing officer;
4. Provide information to the hearing officer to assist in the hearing officer's administration of a fair and impartial hearing;
5. Provide documents and exhibits necessary for the hearing within required timelines; and
6. Comply with timelines, orders, and requests of the hearing officer.

I. Responsibilities of the local educational agency. The local educational agency shall:

*34 CFR §§300.507; 300.508; 300.509; 300.511*

1. Maintain a list of the persons serving as hearing officers. This list shall include a statement of the qualifications of each officer;
2. Provide the parent or parents a form for use to provide notice that they are requesting a due process hearing and a copy of their procedural safeguards;
3. Maintain the confidentiality of the completed notice form and its contents;
4. Ensure that the parent's or parents' right to a hearing is not delayed or denied for failure to complete the notice;

5. Ensure that a hearing officer is appointed within five business days of a request for a nonexpedited hearing and three business days of a request for an expedited hearing;
  6. Inform the parent or parents at the time the request is made of the availability of mediation;
  7. Inform the parent or parents of any free or low-cost legal and other relevant services if the parent or parents request it, or anytime the parent, parents, or the local educational agency initiates a hearing;
  8. Assist the hearing officer, upon request, in securing the location and recording equipment for the hearing;
  9. Make timely and necessary responses to the hearing officer;
  10. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the hearing officer;
  11. Upon request, provide information to the hearing officer to assist in the hearing officer's administration of a fair and impartial hearing;
  12. Provide documents and exhibits necessary for the hearing within required timelines;
  13. Comply with timelines, orders, and requests of the hearing officer;
  14. Maintain a file, which is a part of the child's scholastic record, containing communications, exhibits, decisions, and the implementation plan, including mediation communications, except as prohibited by laws or regulations;
  15. Forward all necessary communications to the Virginia Department of Education and parties as required;
  16. Develop and submit an implementation plan within 45 calendar days of the rendering of a decision or the withdrawal of a hearing request with the following exception: the appeal or consideration of an appeal of the decision by the local school division and the decision is not an agreement by the hearing officer with the parent or parents of the child that a change in placement is appropriate. In such cases, the hearing officer's order must be implemented while the case is appealed and an implementation plan must be submitted. Such plan shall be based upon the decision of the hearing officer or agreement between the parties. The implementation plan shall state how and when the decision or agreement will be put into operation. If the case is closed pursuant to a settlement or mediation agreement, that agreement shall be made a part of the implementation plan. If the decision or agreement affects the child's educational program, the revised IEP shall be made a part of the implementation plan. The implementation plan shall contain the name and position of a case manager in the local educational agency charged with implementing the decision. Copies of this plan shall be forwarded to the parties to the hearing, the hearing officer, and the Virginia Department of Education;
  17. Notify the Virginia Department of Education when the local educational agency is considering an appeal of the hearing officer's decision or when a hearing officer's decision has been appealed to court by either the parent or parents or the local educational agency; and
  18. Forward the record of the due process proceeding to the appropriate court for any case that is appealed.
- J. Responsibilities of the hearing officer. The hearing officer shall: *34 CFR §§300.508; 300.511; 300.521; 300.528*
1. Affirm, by accepting appointment, that he has complied with all training requirements and agrees to complete the hearing within the regulatory timelines: 45 calendar days if assigned to a nonexpedited due process hearing and 20 business days if assigned to an expedited hearing;
  2. Ensure impartiality, and decline the appointment if the hearing officer is an employee of the Virginia Department of Education or of the local educational agency that is involved in the education or care of the child;
  3. Ensure that the rights of all parties are protected and that the laws and regulations regarding the educational placement or services of the child are followed in the conduct of the hearing and in rendering the decision;

4. Within five business days of appointment, secure a date, time, and location for the hearing that are convenient to both parties, and notify both parties to the hearing and the Virginia Department of Education, in writing, of the date, time, and location of the hearing. If the hearing is an expedited hearing, the hearing officer shall complete these responsibilities within two business days of appointment;
5. Ascertain whether the parties will have attorneys or others assisting them at the hearing. The hearing officer shall send copies of correspondence to the parties and their attorneys;
6. Conduct a prehearing conference via a telephone conference call or in person unless the hearing officer deems such conference unnecessary. The prehearing conference may be used to clarify or narrow issues and determine the scope of the hearing. If a prehearing conference is not held, the hearing officer shall document in the written prehearing report to the Virginia Department of Education the reason for not holding the conference;
7. At the prehearing stage, inform the parties of their rights regarding mediation, of their opportunity to settle the case, and at the end of the hearing and upon receiving the decision, of their right to appeal the case directly to either a state or federal court at their discretion;
8. Monitor the mediation process, if the parties agree to mediate, to ensure that mediation is not used to deny or delay the right to a due process hearing, that parental rights are protected, and that the hearing is concluded within regulatory timelines;
9. Ascertain from the parent or parents whether the hearing will be open to the public;
10. Ensure that the parties have the right to a written or, at the option of the parent or parents, an electronic verbatim record of the proceedings and that the record is forwarded to the local educational agency for the file after making a decision;
11. Receive a list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) no later than five business days prior to the hearing. If the hearing is an expedited hearing, receipt must be no later than two business days prior to the hearing;
12. Ensure that the local educational agency has appointed a surrogate parent in accordance with 8 VAC 20-80-64 when the parent, parents, or guardian is not available or cannot be located;
13. Ensure that an atmosphere conducive to impartiality and fairness is maintained at all times in the hearing;
14. Not require the parties or their representatives to submit extensive briefs as a condition of rendering a decision;
15. Make no presumptions in the case and base findings of fact and decisions solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law and regulations;
16. Report findings of fact and decisions in writing to both parties, their attorneys, and the Virginia Department of Education. If the hearing is an expedited hearing, the hearing officer may issue an oral decision at the conclusion of the hearing, followed by a written decision within five business days of the hearing being held;
17. Include in the written findings of a nonexpedited due process hearing, a determination of whether the:
  - a. Requirements of notice to the parent or parents were satisfied;
  - b. Child has a disability;
  - c. Child needs special education and related services; and
  - d. Local educational agency is providing a free appropriate public education;
18. Maintain an organized and well-documented record and return the official record to the local educational agency upon conclusion of the case;

19. Determine in a hearing regarding a manifestation determination whether the local educational agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the following requirements:

a. The IEP team first considered, in terms of the behavior subject to disciplinary action, all relevant information, including:

- (1) Evaluation and diagnostic results, including such results or other relevant information supplied by the parent or parents of the child;
- (2) Observations of the child; and
- (3) The child's IEP and placement; and

b. The IEP team then determined that:

- (1) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
- (2) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and
- (3) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

c. If the IEP team determined that any of these standards were not met, the behavior must be considered a manifestation of the child's disability; and

20. In hearing a case in an expedited due process hearing regarding the authority of local educational agency personnel to change the child's placement to an interim alternative educational placement for up to 45 days:

a. Consider whether the child's current placement is appropriate;

b. Consider whether the local educational agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services;

c. Determine that the local educational agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others; and

d. Determine that the interim alternative educational setting meets the following requirements:

- (1) Is selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and
- (2) Includes services and modifications designed to address the behavior so that it does not recur, such as a functional assessment and a positive behavior support plan.

K. Authority of the hearing officer. The hearing officer has the authority to:

*34 CFR §§300.509; 300.511; 300.521; 300.522*

1. Exclude any documentary evidence which was not provided and any testimony of witnesses who were not identified at least five business days prior to the hearing unless the hearing is an expedited hearing, in which case the information must be received and witnesses identified at least two business days prior to the hearing;

2. Bar any party from introducing evaluations or recommendations at the hearing that have not been disclosed to all other parties at least five business days prior to the hearing (or two business days if an expedited hearing) without the consent of the other party;

3. Issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence.

- a. The hearing officer may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.
- b. Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the hearing officer does not quash or modify the subpoena after objection;
4. Stop hostile or irrelevant pursuits in questioning and require that the parties and their attorneys, advocates, or advisors comply with the hearing officer's rules and with relevant laws and regulations;
5. Excuse witnesses after they testify to limit the number of expert witnesses present at the same time or sequester witnesses during the hearing;
6. Refer the matter in dispute to a conference between the parties when informal resolution and discussion appear to be desirable and constructive. This action shall not be used to deprive the parties of their rights and shall be exercised only when the hearing officer determines that the best interests of the child will be served;
7. Require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with the regulations governing evaluation and assessment;
8. At the request of either party for a nonexpedited hearing, grant specific extensions of time beyond the periods set out in this chapter, if in the best interest of the child. This action shall in no way be used to deprive the parties of their rights and should be exercised only when the requesting party has provided sufficient information that the best interests of the child will be served by the grant of an extension. The hearing officer may grant such requests for cause, but not for attorney convenience. Changes in hearing dates or timeline extensions shall be noted in writing and sent to all parties, their attorneys, and to the Virginia Department of Education;
9. Take action to move the case to conclusion, including dismissing the pending proceeding if either party refuses to comply in good faith with the hearing officer's orders;
10. Set guidelines regarding media coverage if the hearing is open to the public;
11. Enter a disposition as to every issue presented for decision and identify and determine the prevailing party on each issue that is decided;
12. Order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing is an expedited hearing, and after:
  - a. Determining whether the local educational agency has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;
  - b. Considering whether the child's current placement is appropriate;
  - c. Considering whether the local educational agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
  - d. Determining whether the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher meets the following requirements:
    - (1) Is selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and
    - (2) Includes services and modifications designed to address the behavior so that it does not recur; and
13. In an expedited hearing, determine whether it is dangerous for a child to remain in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of due process proceedings. In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the following standards:

- a. Determine whether the local educational agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;
- b. Consider whether the child's current placement is appropriate;
- c. Consider whether the local educational agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
- d. Determine whether the interim alternative educational setting was determined by the IEP team and meets the following requirements:
  - (1) Is selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP;
  - (2) Includes services and modifications designed to address the behavior so that it does not recur; and
  - (3) Is for not longer than 45 calendar days and is repeated if proper procedures are followed.

The procedures in subdivisions 13 a through d of this subsection may be repeated as necessary.

L. Timelines for nonexpedited due process hearings. The hearing officer shall: *34 CFR §300.511*

1. Render a final written decision within 45 calendar days after the request for the hearing is received by the local educational agency;
2. Grant an extension only when it serves the best interests of the child; and
3. Document in writing within five business days changes in hearing dates or extensions and send documentation to all parties and the Virginia Department of Education.

M. Timelines for expedited due process hearings. The hearing officer shall: *34 CFR §300.528*

1. Render a final written decision within 20 business days after the receipt of the request for the expedited hearing by the local educational agency without exceptions or extensions. The 20 business day timeline shall be the same for hearing requested by the parents or local educational agencies; and
2. Document in writing within two business days any changes in hearing dates and send documentation to all parties and the Virginia Department of Education.

N. Costs of due process hearing and attorneys' fees. *34 CFR §300.513*

1. The costs of an independent educational evaluation, hearing officer, court reporters, and transcripts which are incidental to the hearing are shared equally by the local educational agency and the Virginia Department of Education. Costs for any these services incurred by a party for the specific benefit of that party's case are the responsibility of that party.
2. The local educational agency is responsible for its own attorneys' fees.
3. The parent or parents are responsible for their attorneys' fees. If the parent or parents are the prevailing party, they have the right to petition either a state circuit court or a federal district court for an award of reasonable attorneys' fees as part of the costs.
4. A state circuit court or a federal district court may award reasonable attorneys' fees as part of the costs to the parent or parents of a child with a disability who is the prevailing party.
5. The court may award reasonable attorneys' fees only if the award is consistent with the limitations, exclusions, exceptions, and reductions in accordance with the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) and its implementing regulations and 8 VAC 20-80-155.

O. Right of appeal. *COV §22.1-214; 34 CFR §§ 300.510; 300.512; 300.514*

1. A decision by the hearing officer in any hearing, including an expedited hearing, shall be final and binding unless the decision is appealed by a party in a state circuit court within one year of the issuance

of the decision or in a federal district court. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under § 1415 of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) without regard to the amount in controversy.

2. On appeal, the court shall receive the record of the administrative proceedings, shall hear additional evidence at the request of a party, shall base its decision on a preponderance of evidence, and shall grant the relief that the court determines to be appropriate.

3. If the hearing officer's decision is appealed in court, implementation of the hearing officer's order is held in abeyance except in those cases where the hearing officer has agreed with the child's parent or parents that a change in placement is appropriate in accordance with subsection E of this section. In those cases, the hearing officer's order must be implemented while the case is being appealed.

4. In every case within 45 days of the final decision of the hearing officer, an implementation plan must be filed by the local educational agency, with copies to the parties, the Virginia Department of Education, and the hearing officer unless the school division has appealed or is considering an appeal of the decision and the decision is not an agreement by the hearing officer with the parent or parents of the child that a change in placement is appropriate as noted in subdivision 3 of this subsection.

5. If the local educational agency does not file an implementation plan, the local educational agency must notify the Virginia Department of Education within 45 days of the issuance of the decision of the hearing officer that the local educational agency is considering appealing the hearing officer's decision or either the local educational agency or the parent or parents have appealed the hearing officer's decision.

6. If the hearing officer's decision is not implemented as required by this chapter, a complaint may be filed with the Virginia Department of Education for an investigation through the state's complaint system.

P. Special authority of the Virginia Department of Education.

1. The Virginia Department of Education may take action to ensure that the hearing officer:

- a. Complies with all training requirements;
- b. Conducts the hearing in a manner that protects the rights of all parties;
- c. Issues written findings of fact and decisions solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law;
- d. Provides reports and the decision in writing to both parties and to the Virginia Department of Education;
- e. Does not require the submission of burdensome legal research of case law or legal briefs from parties before rendering a decision; and
- f. Complies with timelines as specified in this section.

2. If the hearing officer does not meet the administrative responsibilities for management of the hearing proceedings in a case, the Virginia Department of Education may take action in the best interest of the child to remove the hearing officer from the case.

3. The Virginia Department of Education may impose training and assessment requirements for new and continuing hearing officers as part of the specialized training requirements set by the Supreme Court of Virginia and as otherwise determined by the Virginia Department of Education to be necessary. The Virginia Department of Education may develop training and assessment methodology, including academic or alternative means for completing training requirements. The training requirements may include, but not be limited to, the following topics:

- a. Knowledge of disabilities and their implications in the education setting;
- b. Special education law generally, both federal and state;
- c. Other relevant statutory law;

- d. Knowledge of special education services and placements, including interim alternative educational placements;
- e. Knowledge of special education standards, procedures, and regulations impacting the delivery of educational services to students;
- f. Skill development and understanding of characteristics unique to disabilities.

4. The Virginia Department of Education may establish the number of hearing officers who will be trained and certified to hear special education due process cases.

5. Any hearing officer who has been suspended or removed pursuant to Rule 4 of the Hearing Officer System Rules of Administration or has withdrawn from the Virginia Supreme Court's hearing officer list shall submit a written petition to the Virginia Department of Education requesting approval to be recertified to hear special education cases.

6. If a special education complaint asserting errors by a hearing officer is received, the Virginia Department of Education may require the hearing officer to respond to the complaint. If the Virginia Department of Education determines that the complainant's allegations are valid, the Virginia Department of Education may disallow any claim for compensation by the hearing officer for responding to the complaint.

7. Any hearing officer who exceeds the timelines as prescribed in this section for reasons unrelated to the best interest of the child and not properly documented prior to the mandated timelines shall be required by the Virginia Department of Education to attend specialized training on these requirements before being assigned to another case.

**Q. Management and monitoring of the due process hearing system.**

1. The Virginia Department of Education shall conduct an analysis of special education hearing officers' decisions and the hearing system procedures that incorporates input from the parties to the hearing. Summary information developed from the analysis will be provided to the Virginia Supreme Court, upon request, and may be utilized by the Supreme Court in its evaluation of hearing officers as required in the Hearing Officer System Rules of Administration. Upon request, the Virginia Department of Education shall provide to the Supreme Court information regarding the hearing officer's participation in training, management of the hearing process, actual administration of any hearings, and a review of any decisions rendered.

2. Review and analysis of special education hearing officers' decisions.

a. Within 30 calendar days of receipt of the special education hearing officer's decision, the Virginia Department of Education shall review the decision relative to:

- (1) Apparent bias to either party;
- (2) Correct use of citations;
- (3) Readability; and
- (4) Other errors, such as incorrect names or conflicting data, but not errors of law which are reserved for appellate review.

b. Procedures.

- (1) In conducting its internal review, the Virginia Department of Education may be assisted by external resources.
- (2) The Virginia Department of Education may inform the hearing officer in writing of any concerns and may require the hearing officer to issue an error correction or a statement of clarification.

R. Nothing in this chapter prohibits or limits rights under other federal laws or regulations. *34 CFR §300.512*

**8 VAC 20-80-78. Complaint procedures.**

A. The Virginia Department of Education maintains and operates a complaint system that provides for the investigation and issuance of findings regarding violations of the rights of parents or children with disabilities. The Superintendent of Public Instruction or designee is responsible for the operation of the complaint system. The system has the following requirements: *34 CFR §300.660*

B. A complaint may be filed by any individual, organization, or an individual from another state and must:

*34 CFR §§300.660; 300.662*

1. Be in writing;
2. Be signed by the complainant;
3. Contain a statement that a local educational agency has violated the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) or these special education regulations and include the facts upon which the complaint is based;
4. Address an action that occurred not more than one year prior to the date the complaint is received, unless the Virginia Department of Education determines that a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received by the Virginia Department of Education; and
5. Contain all relevant documents.

C. Upon receipt of a complaint, the Virginia Department of Education shall initiate an investigation to determine whether the local educational agency is in compliance with applicable law and regulations in accordance with the following procedures: *34 CFR §§ 300.660; 300.661*

1. Within seven business days of the receipt of the complaint, the Virginia Department of Education shall send written notification in writing to each complainant and local educational agency against which the violation has been alleged, acknowledging receipt of a complaint, and shall send copies to other appropriate Virginia Department of Education personnel.

a. The notification sent to the local educational agency shall include:

- (1) A copy of the complaint;
- (2) An offer of technical assistance in resolving the complaint;
- (3) A request that the local educational agency submit within 10 business days of receipt of the letter of notification written documentation that the complaint has been resolved; and
- (4) If the complaint was not resolved, a request that the local educational agency submit within 10 business days of receipt of the letter of notification a written response, including all requested documentation. A copy of the response, along with all submitted documentation, shall simultaneously be sent by the local educational agency to the complainant if the complaint was filed by the parent or parents of the child, the student, or their attorney. If the complaint was filed by another individual, the local educational agency shall simultaneously send the response and submitted documentation to that individual if a release signed by the parent or parents or student who has reached the age of majority has been provided.

b. The notification sent to the complainant and the local educational agency shall provide the complainant and the local educational agency with an opportunity to submit additional information about the allegations in the complaint, either orally or in writing. The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completing the investigation within the 60-day regulatory timeline.

2. If a reply from the local educational agency is not filed with the Virginia Department of Education within 10 business days of the receipt of the notice, the Virginia Department of Education shall send a second notice to the local educational agency advising that failure to respond within seven business days of the

date of such notice will result in review by the Superintendent of Public Instruction or designee for action regarding appropriate sanctions.

3. The Virginia Department of Education shall review the complaint and reply filed by the local educational agency to determine if further investigation or corrective action needs to be taken.

a. If no further investigation or action is necessary, the Virginia Department of Education shall notify both parties in writing, stating the grounds for such finding.

b. If further investigation is necessary, the Virginia Department of Education shall conduct an investigation of the complaint which shall include a complete review of all relevant documentation and may include an independent on-site investigation, if necessary.

c. If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the Virginia Department of Education shall:

(1) Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(2) Resolve any issue in the complaint that is not a part of the due process hearing involving the same parties.

d. If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the Virginia Department of Education shall inform the complainant that the due process hearing decision is binding.

4. During the course of the investigation, the Virginia Department of Education shall:

a. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.

b. Make a determination of compliance or noncompliance on each issue based upon the facts and applicable law, regulations, or standards and notify the parties in writing of the findings and the bases for such findings.

(1) A time limit of 60 calendar days shall be allowed after the written complaint is received to carry out the investigation and to resolve the complaint.

(2) An extension of the 60 calendar days time limit may occur if exceptional circumstances exist with respect to a particular complaint. Both parties to the complaint will be notified in writing by the Virginia Department of Education of the exceptional circumstances and the extended time limit.

c. Ensure that the Virginia Department of Education's final decision is effectively implemented, if needed, through:

(1) Technical assistance activities;

(2) Negotiations; and

(3) Corrective actions to achieve compliance.

d. Report findings of noncompliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.

e. Notify the parties in writing of any needed corrective actions and the specific steps that must be taken by the local educational agency to bring it into compliance. The local educational agency will be given 15 business days from the date of notice of noncompliance to respond and initiate corrective action.

5. In resolving a complaint in which a failure to provide appropriate services is found, the Virginia Department of Education must address:

a. The remediation of the denial of those services, including, as appropriate, compensatory services, the awarding of monetary reimbursement, or other corrective action appropriate to the needs of the child; and

b. Appropriate future provision of services for all children with disabilities.

D. When the local educational agency develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the Virginia Department of Education.

E. If the local educational agency does not come into compliance within the period of time set forth in the notification, the matter will be referred to the Superintendent of Public Instruction or designee for an agency review and referral to the Virginia Board of Education, if deemed necessary.

F. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, finds that the local educational agency has failed to comply with applicable laws and regulations and determines that compliance cannot be secured by voluntary means, then the superintendent shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to that local educational agency until there is no longer any failure to comply with the applicable law or regulation.

G. Parties to the complaint procedures shall have the right to appeal the final decision to the Virginia Department of Education within 30 calendar days of the issuance of the decision in accordance with procedures established by the Virginia Board of Education.

H. The Virginia Department of Education's complaint procedures shall be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. *34 CFR §300.660*

#### **8 VAC 20-80-80. Surrogate parent procedures.**

A. Role of surrogate parent. The surrogate parent appointed in accordance with this section represents the child in all matters relating to: *34 CFR §300.515 (e)*

1. The identification, evaluation, or educational placement of the child; or
2. The provision of a free appropriate public education to the child.

B. Appointment of surrogate parents.

1. Children, aged two to 21, inclusive, who are suspected of having or determined to have disabilities do not require a surrogate parent if:

a. The natural parent or parents or guardians are allowing relatives or private individuals to act as a parent;

b. The child is in the custody of the local department of social services or a licensed child-placing agency, and termination of parental rights has been granted by a juvenile and domestic relations district court of competent jurisdiction in accordance with § 16.1-283, § 16.1-277.01, or § 16.1-277.02 of the Code of Virginia. The foster parent for that child may serve as the parent of the child for the purposes of any special education proceedings.

c. The child is in the custody of a local department of social services or a licensed child-placing agency, and a permanent foster care placement order has been entered by a juvenile and domestic relations district court of competent jurisdiction in accordance with § 63.1-206.1 of the Code of Virginia. The permanent foster parent named in the order for that child may serve as the parent of the child for the purposes of any special education proceedings.

2. A surrogate parent shall be appointed for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when: *34 CFR §300.515*

a. No parent, as defined in this chapter, can be identified; or

- b. The local educational agency, after reasonable efforts, cannot discover the whereabouts of a parent.
  - 3. A surrogate parent shall be appointed as the educational representative for a child who reaches the age of majority if the local educational agency has received written notification that the child is not competent to provide informed consent in accordance with 8 VAC 20-80-72 C 3 or C 4 and no family member is available to serve as the child's educational representative.
  - 4. The local educational agency shall establish procedures for determining whether a child needs a surrogate parent. *34 CFR §300.515 (c)*
  - 5. The local educational agency shall establish procedures for assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by the local educational agency superintendent or designee. *34 CFR §300.515 (b)*
    - a. The appointment having been effected, the local educational agency shall notify in writing:
      - (1) The child with a disability, aged two to 21, inclusive, as appropriate to the disability;
      - (2) The surrogate parent-appointee;
      - (3) The person charged with responsibility for the child; and
      - (4) The custodial state agency charged with responsibility for the child.
    - b. The surrogate parent shall serve during, or for the duration of, the school year for which the surrogate parent is appointed.
      - (1) When it has been determined that the child requires a differentiated instructional program as delineated in the IEP, the surrogate parent shall be appointed to serve for the duration of the child's IEP.
      - (2) If the child requires the services of a surrogate parent during the summer months, the local educational agency shall extend the appointment as needed, consistent with timelines required by law.
    - c. At the conclusion of each school year, the appointment of surrogate parents shall be renewed or not renewed following a review by the local educational agency.
  - 6. Each local educational agency shall establish procedures which include conditions and methods for changing or terminating the assignment of a surrogate parent before that surrogate parent's appointment has expired. Established procedures shall provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows:
    - a. The child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed for the child in accordance with the procedures in 8 VAC 20-80-72;
    - b. The child is found no longer eligible for special education services and the surrogate parent has consented to the termination of those services;
    - c. Legal guardianship for the child is transferred to a person who is able to carry out the role of the parent;
    - d. The parent or parents, whose whereabouts were previously unknown, are now known and available; or
    - e. The appointed surrogate parent is no longer eligible according to subsection D of this section.
- C. Identification and recruitment of surrogate parents.
- 1. The local educational agency shall develop and maintain a list of individuals within its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for the local educational agency to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents.

2. Individuals who are not on the local educational agency list may be eligible to serve as surrogate parents, subject to the local educational agency's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the local educational agency's determination of surrogate eligibility. Other factors which warrant the local educational agency's attention are as follows:

- a. Consideration of the appointment of a relative to serve as surrogate parent;
- b. Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately;
- c. Consideration of the appointment of a qualified person of the same racial, cultural, or linguistic background as the child; and
- d. The appropriateness of the child's participation in the selection of the surrogate parent.

D. Qualifications of surrogate parents.

34 CFR §§300.515 (c) & (d)

1. The local educational agency shall ensure that a person appointed as a surrogate:

- a. Has no interest that conflicts with the interest of the child;
- b. Has knowledge and skills that ensure adequate representation of the child. The prospective surrogate parent must have completed a local educational agency approved training session prior to representing the child. Thereafter, the local educational agency shall provide annual training, as necessary, for surrogate parents to ensure that they possess knowledge of special education and related services for children with disabilities, as well as knowledge of the legal requirements necessary to represent the children effectively.
- c. Is not an employee of the Virginia Department of Education, or any other agency which is involved in the education or care of the child;
- d. Is an adult; and
- e. Resides in the same general geographic area as the child, whenever possible.

2. A local educational agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides noneducational care for the child and who meets the above standards.

3. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

E. Rights of surrogate parents. The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents under this chapter.

34 CFR §300.515 (e)

**8 VAC 20-80-90. Local educational agency administration and governance.**

A. The local educational agency shall ensure that the rights and protections under this chapter are given to children with disabilities for whom it is responsible, including children placed in private schools.

B. Plans, applications, and reports.

1. The local educational agency shall prepare and submit to the Virginia Department of Education, policies and procedures for the provision of special education and related services that comply with all sections of this chapter and other relevant federal and state laws and regulations and any revisions to such policies and procedures. Local school divisions shall first submit the policies and procedures and the revisions to the policies and procedures to their local school board for approval. State-operated programs, the Virginia School for the Deaf and the Blind at Staunton, and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton shall first submit the policies and procedures to the state special education advisory committee for review. The policies and procedures shall include:

COV §22.1-215; 34 CFR §300.220

- a. An application for funding under Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) containing assurances of compliance in accordance with the requirements of the Act and the procedures outlined by the Virginia Department of Education.

34 CFR §300.230

b. Progress toward meeting the goals for the performance of children with disabilities in accordance with subdivision 10 of 8 VAC 20-80-30 and the comprehensive system of personnel development in accordance with subdivision 11 of 8 VAC 20-80-30. *34 CFR §300.221*

2. The local educational agency shall also ensure that all required special education policies and procedures and the revisions to those policies and procedures necessary for ensuring a free appropriate public education to a child are available for public inspection.

C. Personnel development. The local educational agency shall establish a program and procedures for the development and implementation of a comprehensive system of personnel development that is consistent with the state improvement plan identified in subdivisions 12 and 13 of 8 VAC 20-80-30. *34 CFR §300.380*

D. Provision of or payment for special education and related services. *34 CFR §300.142 (b)*

1. If any public noneducational agency is otherwise obligated under federal or state law, regulation, or policy to provide or pay for any services that are also considered special education or related services that are necessary for ensuring a free appropriate public education to children with disabilities, the public noneducational agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

2. If any public noneducational agency fails to provide or pay for the special education and related services described in subdivision 1 of this subsection, the local educational agency shall provide or pay for the services to the child in a timely manner.

The local educational agency may then claim reimbursement for the services from the public noneducational agency that failed to provide or pay for the services and that agency shall reimburse the local educational agency in accordance with the terms of the interagency agreement described in subdivision 16 of 8 VAC 20-80-30.

E. Local advisory committee. A local advisory committee for special education, appointed by each local school board, shall advise the school board through the division superintendent. The composition of the committee shall include parents of children with disabilities and persons with disabilities.

1. Local school division personnel shall serve only as consultants to the committee.

2. The functions of the local advisory committee shall be as follows:

a. Advise the local school division of unmet needs in the education of children with disabilities;

b. Assist the local school division in the formulation and development of plans for improving performance of children with disabilities specified in subdivision B 1 b of this section;

c. Participate in the development of priorities and strategies for meeting the identified needs of children with disabilities;

d. Submit periodic reports and recommendations regarding the education of children with disabilities to the division superintendent for transmission to the local school board;

e. Assist the local school division in interpreting plans to the community for meeting the special needs of children with disabilities for educational services; and

f. Review the policies and procedures for the provision of special education and related services prior to submission to the local school board and the Virginia Department of Education.

3. Public notice shall be published annually listing the names of committee members and including a description of ways in which interested parties may express their views to the committee.

4. Committee meetings shall be held at least quarterly and shall be open to the public.

F. Regional special education programs.

*COV §22.1-218; Jointly Owned and Operated Schools and Jointly Operated Programs (8 VAC 20-280-10 et seq.)*

1. If it becomes necessary for local school divisions to develop regional programs to serve children with disabilities residing within their jurisdiction, such regional programs shall be provided in accordance with the least restrictive environment requirements specified in 8 VAC 20-80-64.

2. If local school divisions elect to participate in an approved regional program for the provision of special education and related services for certain children with disabilities, a joint board shall be established to manage and control the jointly owned or operated program, center, or school. Establishment of the joint board and administration of the jointly owned and operated program shall be conducted in accordance with the Virginia Board of Education regulations governing such programs.

3. Each joint board shall appoint a qualified director who shall be the administrative head of the regional program. The director shall be responsible for the administration of programs and services which are approved by the joint board.

G. Transition from infant and toddler programs to early childhood special education programs.

*34 CFR §300.132*

1. Children who are participating in early intervention programs under Part C of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) and who will participate in preschool programs under Part B shall be afforded a smooth and effective transition to the preschool programs in a manner consistent with the Virginia lead agency's Part C early intervention policies and procedures.

2. The local school division shall participate in transition planning conferences when notified by the designated local Part C early intervention agency, in accordance with 34 CFR § 303.148(b).

H. Programs for children with disabilities in regional or local jails.

*34 CFR §300.121; 300.122*

1. Each local school division with a regional or local jail in its jurisdiction shall be responsible for the provision of special education and related services to all eligible children with disabilities incarcerated in the jail for more than 10 days.

2. Each local school division with a regional or local jail in its jurisdiction shall establish an interagency agreement with the sheriff or jail administrator responsible for the regional or local jail. The interagency agreement shall address staffing and security issues associated with the provision of special education and related services in the jail. A copy of this agreement shall be submitted with the policy and procedures specified in subsection A of this section.

## PART IV. FUNDING.

### 8 VAC 20-80-100. Eligibility for funding.

A. Each local school division and state-operated program shall maintain current policies and procedures and supporting documentation to demonstrate compliance with the Virginia Board of Education regulations governing the provision of special education and related services, licensure and accreditation. Changes to the local policies and procedures and supporting documentation shall be submitted upon amendment or revision. Changes shall be made as determined by local need; as a result of changes in state or federal laws or regulations; as a result of required corrective action; or as a result of decisions reached in administrative proceedings, judicial determinations, or other findings of noncompliance. *34 CFR §§ 300.181; 300.182*

B. All disbursement is subject to the availability of funds. In the event of insufficient state funds, disbursement may be prorated pursuant to provisions of the Virginia Appropriation Act.

### 8 VAC 20-80-110. State funds for local school divisions.

A. State funds to assist local school divisions with the cost of providing special education and related services for children with disabilities shall be provided through the Virginia Department of Education's appropriation as provided in this section.

B. Children with disabilities enrolled in programs operated by a local school board:

1. Public school programs. In addition to the funds received for each pupil from state basic aid, local school divisions shall receive payment to support the state share of the number of special education teachers and paraprofessionals required by the Standards of Quality (§ 22.1-253.13:1 et seq. of the Code of Virginia).

2. Homebound instruction. Subject to availability, local school divisions shall receive funds to assist with the cost of educating students who are temporarily confined for medical or psychological reasons. Such students may continue to be counted in the average daily membership (ADM) while receiving homebound instruction. In addition, costs will be reimbursed based on the composite index, the hourly rate paid to homebound teachers by the local educational agency, and the number of instructional hours delivered. Reimbursement will be made in the year following delivery of instruction.

*Regulations Establishing Standards for Accrediting Public Schools in Virginia (8 VAC 20-131-10 et seq.)*

3. Transportation. Local school divisions that transport children with disabilities, aged two to 21, inclusive, on approved school buses or on public transit buses to public schools or approved private schools, pursuant to their IEPs, are reimbursed in accordance with pupil transportation regulations (8 VAC 20-70-10 et seq.).

C. Children with disabilities enrolled in regional special education programs:

*COV §22.1-211*

1. Reimbursement is available for a portion of the tuition costs based on the local composite index computed as specified by the Virginia Appropriation Act. Rates will be approved following procedures established by the Virginia Board of Education. Regional special education programs operated by a joint board and the Woodrow Wilson Rehabilitation Center are eligible to receive reimbursement. Reimbursement is available to programs offering services to children who have one or more of the following disabilities:

- a. Severe disability;
- b. Emotional disturbance;
- c. Autism;
- d. Multiple disabilities;
- e. Deafness;
- f. Hearing impairment, including deafness;

- g. Deaf-blindness; or
- h. Traumatic brain injury.

2. Such reimbursement shall be in lieu of the state per pupil basic aid otherwise available for each child.

*COV§22.1-218*

D. Children with disabilities receiving special education and related services in regional or local jails. Local school divisions will be reimbursed for the instructional costs of providing required special education and related services to children with disabilities in regional or local jails.

*Virginia Appropriation Act*

E. Funds under the Comprehensive Services Act for At-Risk Youth and Families.

*COV§§2.2-5211-5212*

1. Funds are available under the Comprehensive Services Act to support the cost of:

- a. Special education and related services for children with disabilities whose IEPs specify private day or private residential placement;
- b. Certain nonspecial education services for children with disabilities whose Comprehensive Services Act team identifies that such services are necessary to maintain the child in a less restrictive special education setting, in accordance with Comprehensive Services Act requirements; and
- c. Special education and related services for children with disabilities who are placed by a Comprehensive Services Act team in a private residential placement for noneducational reasons.

2. Local school divisions shall be responsible for payment of transportation expenses associated with implementing the child's IEP.

3. Comprehensive Services Act reimbursement requirements shall be applicable.

4. When a parent unilaterally places a child with a disability in an approved private nonsectarian school for children with disabilities, the local school division shall not be responsible for the cost of the placement. If a hearing officer or court determines that such placement, rather than the IEP proposed by the local school division, is appropriate and no appeal is perfected from that decision, the local school division is responsible for placement and funds are available under the Comprehensive Services Act to support the costs.

F. Reimbursement for educating children with disabilities receiving foster care or noncustodial foster care across geographic boundaries and educated in the local school division shall be made in accordance with procedures established by the Virginia Department of Education.

*COV§22.101.1*

### **8 VAC 20-80-120. Federal funds.**

A. Federal funds are available under Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to assist local educational agencies with the excess cost of providing special education and related services to eligible children with disabilities. The local educational agency must submit an annual application to the Virginia Department of Education describing the use of such funds.

*34 CFR §300.184; 34 CFR §76.301*

B. In order to qualify for Part B funds, a local school division must spend as much in state and local funds on children with disabilities as on children without disabilities.

*34 CFR §300.184*

C. Part B funds may not be used to supplant state and local expenditures for special education and related services, and shall not be used to reduce the level of expenditures for the education of children with disabilities made by the local school division from the local funds below the level of those expenditures for the preceding year, except under certain conditions specified under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

*34 CFR §300.230; 300.231; 300.232*

D. The amount of Part B funds determined to be available for each local educational agency shall be based upon the formula specified under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

*34 CFR §300.712*

E. A local educational agency may use Part B funds to implement a schoolwide program under § 1114 of the Improving America's School Act (Title I) (20 USC § 1001 et seq.), but the amount of Part B funds used in any fiscal year shall not exceed the amount of total Part B funds received that year, divided by the number of children with disabilities in the jurisdiction, and multiplied by the number of children with disabilities participating in the schoolwide program. Part B funds used for this purpose are not subject to other Part B funding requirements, but the local educational agency must ensure that all children with disabilities in schoolwide program schools:

34 CFR §300.234

1. Receive services in accordance with a properly developed IEP; and
2. Are afforded all of the rights and services guaranteed to children with disabilities under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

F. Children without disabilities may benefit from the expenditure of Part B funds when special education and related services and supplementary aids and services are provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child.

34 CFR §300.235 (a)

G. A local educational agency may not use more than 5.0% of the money it receives under Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) for any fiscal year to develop and implement a coordinated services system designed to improve results for children and families, including children with disabilities and their families. The conditions specified by the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) shall apply.

34 CFR §300.244

H. If the Virginia Department of Education determines that a local school division is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that school division with state and local funds, the department may reallocate any portion of the funds under Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) that are not needed by the school division to provide a free appropriate public education to other school divisions in the state that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve.

34 CFR §300.714

I. In any fiscal year in which the percentage increase in the state's Part B allocation exceeds the rate of inflation, a portion as defined by the federal regulations of the state's grant must be awarded to the local educational agency to assist them in providing direct services and in making systemic change to improve results for children with disabilities. The Virginia Department of Education may establish priorities in awarding these subgrants competitively or on a targeted basis.

34 CFR §§300.622 - 624

### **8 VAC 20-80-130. Funds to assist with the education of children with disabilities residing in state-operated programs.**

A. State mental health facilities. State funds for education for children in state mental health facilities are appropriated to the Virginia Department of Education. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental health facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the mental health facilities. Federal funds are available under the provisions of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

Virginia Appropriation Act; 34 CFR

§300.711

B. State training centers for the mentally retarded. State funds for special education and related services for children with disabilities in state training centers for the mentally retarded are appropriated to the Department of Mental Health, Mental Retardation and Substance Abuse Services. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental retardation facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the centers. Federal funds are available under the provisions of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

Virginia Appropriation Act; 34 CFR

§300.711

C. State specialized children's hospitals. State funds for special education and related services are appropriated to the Virginia Department of Education. Federal funds are available under the provisions of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.). *Virginia Appropriation Act; 34 CFR §300.711*

D. Woodrow Wilson Rehabilitation Center. State funds for education for children are appropriated to the Virginia Department of Education. Federal funds are available under the provisions of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.). *Virginia Appropriation Act; 34 CFR §300.711*

E. Regional and local juvenile detention homes. State funds for education services are appropriated to the Virginia Department of Education. *Virginia Appropriation Act; 34 CFR §300.711*

F. State-operated diagnostic clinics. State funds for the employment of educational consultants assigned to child development and other specialty clinics operated by the state Department of Health are appropriated to the Virginia Department of Education. *Virginia Appropriation Act; 34 CFR §300.711*

G. Virginia Department of Correctional Education. State funds for the education of children, including children with disabilities, are appropriated to the Virginia Department of Correctional Education for the education of all children residing in state adult or juvenile correctional facilities and juveniles committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice. Federal funds are available under the provisions of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.). *Virginia Appropriation Act; 34 CFR §300.711*

H. The Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton. State funds are appropriated directly to these schools to operate day and residential special education programs for children placed by local school divisions. Local funds for the education of children at the schools shall be the amount equal to the local per pupil expenditure for the period in which the child is a resident of the school. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the schools. *Virginia Appropriation Act; 34 CFR §300.348*

#### **8 VAC 20-80-140. Funding, withholding, and recovery of funds.**

A. The Virginia Department of Education shall disburse funds to local educational agencies for the education of children with disabilities, aged two to 21, inclusive, when they provide documentation of compliance with state and federal laws and regulations. *34 CFR §300.220*

B. If documentation of compliance is not submitted or is inadequate, the Superintendent of Public Instruction shall notify the local educational agency that state and federal funds will not be available for reimbursement for special education programs and services.

1. The notification shall include the substance of the alleged violation, and the local educational agency shall be given an opportunity to submit a written response; and

2. The local educational agency shall have the right to appeal to the Virginia Board of Education under 8 VAC 20-80-150.

C. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing under 8 VAC 20-80-150, finds that a local educational agency has failed to comply with the state and federal laws and regulations and determines that compliance cannot be secured by voluntary means, the superintendent shall issue a decision in writing stating that state and federal funds for the education of eligible children with disabilities shall not be made available to that local educational agency until it complies with the state and federal laws and regulations. *34 CFR §300.196*

D. If there is evidence that a child has been erroneously classified and thereby counted as eligible for state and federal special education funds and such evidence is challenged by the local educational agency, the foregoing due process procedures shall apply. *34 CFR §300.145*

E. If it is determined that such funds have been erroneously claimed, the Virginia Department of Education shall bill the local educational agency for the amount of funds improperly received and withhold an equal amount of state or federal funds for the following year if not repaid by the local educational agency. *34 CFR §300.145*

**8 VAC 20-80-150. Appeal of administrative decision regarding funding.**

A. The Virginia Department of Education's recommendation to disapprove local eligibility for funding under Individuals with Disabilities Education Act (20 USC § 1400 et seq.), to withhold state and federal funds for special education and related services, or to disapprove rates set for the regional special education programs may be appealed by a local educational agency. *34 CFR §300.144; 34 CFR §76.401*

B. The procedures for the appeal of administrative decisions are as follows: *34 CFR §300.144*

1. The local educational agency must request in writing a hearing by the Virginia Department of Education within 30 business days from the receipt of notification from the Superintendent of Public Instruction;
2. Within 10 business days from the date of request for a hearing, the Superintendent of Public Instruction shall notify the local educational agency in writing of the date, time, and location of the hearing;
3. The hearing shall be conducted within 15 business days from the date of notification;
4. The hearing shall be conducted by an independent hearing officer appointed from a list maintained by the Supreme Court of Virginia;
5. Witnesses and attorneys may be present and testify for the Virginia Department of Education or the local educational agency;
6. A written or electronic verbatim record shall be kept of all proceedings of the hearing;
7. The hearing officer shall review all pertinent evidence presented and shall render a decision based on the preponderance of evidence presented at the hearing and on applicable state and federal law;
8. No later than 10 business days after the hearing, the hearing officer shall issue a written ruling, including findings of fact and reasons for the findings; *34 CFR §76.401 (d) (4) (ii)*
9. The decision made by the hearing officer shall be final unless an appeal is requested by a local educational agency;
10. If the Virginia Department of Education does not rescind its final action after a review under this subsection, the applicant may appeal to the U.S. Secretary of Education under the provisions of the Education Department General Administrative Regulations; and *34 CFR §76.401*
11. Notice of appeal shall be filed within 30 business days after the local educational agency has been notified by the Virginia Department of Education of the results of the hearing. *34 CFR §76.401 (d) (5)*

**8 VAC 20-80-152. Use of public and private insurance.**

A. Children with disabilities who are covered by public insurance. *34 CFR §300.142 (e)*

1. A local educational agency may use Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under this chapter and as permitted under the public insurance program except as provided in subdivision 2 of this subsection.
2. With regard to services required to provide a free appropriate public education to an eligible child with a disability, a local educational agency:
  - a. May not require the parent or parents to sign up for or enroll in public insurance programs in order for their child to receive a free appropriate public education;
  - b. May not require the parent or parents to incur any out-of-pocket expense, such as the payment of a deductible or copay amount incurred in filing a claim for services provided pursuant to this section, but in accordance with subsection C of this section may pay the cost that the parent or parents otherwise would be required to pay; and
  - c. May not use a child's benefits under a public insurance program if that use would:
    - (1) Decrease available lifetime coverage or any other insured benefit;

- (2) Result in the family's paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
- (3) Increase premiums or lead to the discontinuation of insurance; or
- (4) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

B. Children with disabilities who are covered by private insurance. *34 CFR §300.142 (f)*

1. With regard to services required to provide a free appropriate public education to an eligible child under this chapter, a local educational agency may access a parent's private insurance proceeds only if the parent provides informed consent as defined by this chapter.
2. Each time the local educational agency proposes to access a parent's private insurance proceeds, it must:
  - a. Obtain informed parental consent; and
  - b. Inform the parent that the refusal to permit the local educational agency to access his private insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent or parents.

C. Use of Part B funds. *34 CFR §300.142 (g)*

1. If a local educational agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this chapter to ensure a full appropriate public education, the local educational agency may use its Part B funds under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to pay for the service.
2. To avoid financial cost to a parent who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the local educational agency may use its Part B funds to pay the costs the parent otherwise would have to pay to use the parent's insurance (e.g., deductible or co-pay amounts).

D. Proceeds from public or private insurance. *34 CFR §300.142 (h)*

1. Proceeds from public or private insurance will not be treated as program income for purposes of the Education Department General Administrative Regulations. *34 CFR §80.25*
2. If a local educational agency spends reimbursements from federal funds (e.g., Medicaid) for services under this chapter, those funds will not be considered state or local funds for purposes of the maintenance of effort provisions. *34 CFR §300.142 (h)*

E. Nothing in this chapter should be construed to alter the requirements imposed on a state Medicaid agency or any other agency administering a public insurance program by federal law, regulations, or policy under Title XIX or Title XXI of the Social Security Act, or any other public insurance program.

*34 CFR §300.142 (i)*

**8 VAC 20-80-155. Attorneys' fees.**

A. In any action or proceeding brought under § 1415 of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.), the court in its discretion may award reasonable attorneys' fees as part of the costs to the parent or parents of a child with a disability who is the prevailing party. *34 CFR §300.513 (a) & (b)*

1. Funds under Part B may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under § 1415 and Subpart E of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).
2. This section does not preclude a local educational agency from using funds under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) for conducting an action or proceeding under § 1415 of the Act.

B. A court shall award reasonable attorneys' fees under § 1415 of the Act consistent with the following:

1. Determination of amount of attorneys' fees. Fees awarded under § 1415 of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.
2. Prohibition of attorneys' fees and related costs for certain services.
  - a. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under § 1415 of the Act for services performed subsequent to the time of a written offer of settlement to a parent or parents if:
    - (1) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 calendar days before the proceeding begins;
    - (2) The offer is not accepted within 10 calendar days; and
    - (3) The court or administrative hearing officer finds that the relief finally obtained by the parent or parents is not more favorable to the parent or parents than the offer of settlement.
  - b. Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or for a mediation described in this chapter that is conducted prior to the filing of a request for due process under this chapter.
3. Exception to prohibition on attorneys' fees and related costs. Notwithstanding subdivision 2 of this subsection, an award of attorneys' fees and related costs may be made to a parent or parents who are the prevailing party and who were substantially justified in rejecting the settlement offer.
4. Reduction of amount of attorneys' fees. Except as provided in subdivision 5 of this subsection, the court reduces, accordingly, the amount of the attorneys' fees awarded under this chapter if the court finds that:
  - a. The parent or parents, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
  - b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
  - c. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
  - d. The attorney representing the parent or parents did not provide to the local educational agency the appropriate information in the notice to request a due process hearing in accordance with this chapter.
5. Exception to reduction in amount of attorneys' fees. The provisions of subdivision 4 of this subsection do not apply in any action or proceeding if the court finds that the state or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of § 1415 of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

PART V.  
ADDITIONAL RESPONSIBILITIES OF STATE BOARDS, AGENCIES, AND  
INSTITUTIONS FOR EDUCATION AND TRAINING OF CHILDREN WITH  
DISABILITIES IN RESIDENCE OR CUSTODY.

**8 VAC 20-80-160. Additional responsibilities of state boards, agencies, and institutions for education and training of children with disabilities in residence or custody.**

A. Provision of education to children with disabilities in residence or custody.

1. Each state board, agency, and institution having children with disabilities in residence or custody shall provide education pursuant to standards, policies and procedures established by the Virginia Board of Education which is comparable to that provided to children with disabilities in the public school system.

a. The Department of Correctional Education shall establish and maintain schools for persons committed to the state, regional or local correctional facilities operated by the Department of Corrections and the Department of Juvenile Justice and for persons committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice.

*COV §§ 22.1-7; 22.1-340*

b. The Superintendent of Public Instruction shall approve the education programs at the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.

*COV §§ 22.1-7; 22.1-347; 22.1-348*

c. The Department of Mental Health, Mental Retardation and Substance Abuse Services has responsibility for providing the education and training to children with mental retardation in residence in its institutions. The Virginia Board of Education shall supervise the education and training provided to school-age residents in state mental retardation facilities.

*COV § 22.1-7*

d. The Virginia Board of Education shall provide for and direct the education of school-age residents in state mental health facilities in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services.

*COV §§ 22.1-7; 22.1-209.2*

e. The Virginia Board of Education shall prepare and supervise the education and training provided to children in regional and local detention homes.

*COV §§ 22.1-7; 22.1-209.2*

f. The Virginia Board of Education shall supervise the evaluation, education, and training provided to school-age children by the Virginia Department of Health and to school-age children in the teaching hospitals associated with the Medical College of Hampton Roads, the Medical College of Virginia Hospitals, and The University of Virginia Hospitals.

*COV §§ 22.1-7; 22.1-209.2*

2. The procedures outlined in 8 VAC 20-80-90 are applicable to each state board, agency, and institution having children with disabilities in residence and custody.

*COV §§ 22.1-7*

B. Annual program plan. Each state board, agency, and institution having responsibility for providing such education and training shall submit annually to the Virginia Department of Education for approval by the Virginia Board of Education its program plan for the education and training for children with disabilities in residence or custody. This program plan, to be submitted by the date and in the manner specified by the Virginia Board of Education, shall include the provisions and assurances as specified in 8 VAC 20-80-90. In addition, the program plan shall include the following:

1. The educational objectives of the state board, agency, or institution;

2. Strategies for achieving the educational objectives, including an organized program for staff development;

3. A system of communication between educational and other personnel, including treatment and residential care staff, to ensure coordination of program objectives;

4. A system of communication to ensure service continuity in the transition of the student into and out of the educational program of the facility and, where applicable, the requirements for reenrollment of juveniles committed to the Department of Juvenile Justice, as provided for in the Code of Virginia;

*COV §§ 16.1-293; 22.1-289 (E)*

5. An assessment plan for determining the extent to which the objectives have been achieved including, where practicable, follow-up studies of former students to assist in annual program evaluation;

6. A system of communication between the state board, agency, or institution and its employees, whereby the views of all educational employees may be received in an orderly and constructive manner;

7. A cooperatively developed procedure for the evaluation of educational personnel;

8. The grievance procedures regarding educational personnel as prescribed by the state or the appropriate local agency or board;

9. A comprehensive system of personnel development to include the training of general and special education instructional personnel, support personnel, and paraprofessionals as required under 8 VAC 20-80-30;

10. At least 5-1/2 hours of education/training per school day or 27-1/2 hours per school week available for each student to implement the student's IEP.

a. If a student has a medical or physical condition that requires modification of the school schedule, a waiver statement shall be placed on file.

b. This waiver statement shall document the physical or mental condition of the individual student which requires significant modification of this schedule, and personnel from the following facilities shall file statements of concurrence:

(1) The attending physician -- the Department of Mental Health, Mental Retardation and Substance Abuse Services facilities;

(2) The central review committee, institute review committee or Department of Juvenile Justice physician or psychologist for medical or psychological conditions, with a waiver statement signed by the Department of Juvenile Justice security staff or designee for safety or security conditions -- the Department of Correctional Education;

(3) The physician, staffing committee or principal -- the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton;

(4) The center counselor upon recommendation of the staffing committee -- Woodrow Wilson Rehabilitation Center;

(5) The attending physician -- state medical facilities;

(6) The detention superintendent or designee -- juvenile detention homes.

11. The Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton shall provide for each age group of children a planned dormitory and a student-life program, including social and daily living skills, recreation, and cultural activities.

#### C. Staff and facility.

1. Each state board, agency or institution shall assign personnel to the educational program as follows:

a. Administrative, supervisory, instructional, support and ancillary personnel holding valid professional licenses, certificates and endorsements as appropriate in the area of assignment (national standards may apply in the absence of state licensure or certification requirements).

b. Additional education personnel to provide required related services as delineated in the child's IEP.

c. Trained and supervised paraprofessionals who shall have earned a high school diploma or equivalent.

2. Each state board, agency or institution shall staff the educational program as follows:

- a. A principal, supervisor, education director, or lead teacher for the educational program provided at each school or institution, except for juvenile detention homes;
- b. Instructional personnel sufficient to maintain pupil-teacher ratios not to exceed the following:
  - (1) Emotional disturbance - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;
  - (2) Hearing impairment/deaf - one teacher for every seven children with one paraprofessional for every three classroom teachers; at the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;
  - (3) Mental retardation - one teacher and one paraprofessional for every 10 children;
  - (4) Severe disability - one teacher and one paraprofessional for every six children or one teacher and two paraprofessionals for every 10 children;
  - (5) Visual impairment - one teacher for every seven children and one paraprofessional for every three classroom teachers;
  - (6) Other health impairment - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;
  - (7) Orthopedic impairment - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;
  - (8) Specific learning disability - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;
  - (9) Multiple disabilities or deaf-blindness - one teacher and one paraprofessional for every six students or one teacher and two paraprofessionals for every 10 students;
  - (10) Autism - one teacher for every six students or one teacher and one paraprofessional for every eight students;
  - (11) Traumatic brain injury - students may be placed in any program, according to the student's IEP;
  - (12) Department of Correctional Education - no greater than an average of one teacher and one paraprofessional for every 10 children;
  - (13) Woodrow Wilson Rehabilitation Center - no greater than an average of one teacher for every 10 children;
  - (14) Juvenile detention homes - one teacher for every 12 beds, based on the bed capacity of the facility. If the number of students exceeds the bed capacity, then the ratio shall be one teacher for every 12 students based on the average daily attendance from the previous school year. If unusual or extenuating circumstances exist, the agency may apply to the Superintendent of Public Instruction for an exception to the ratio requirements. Such requests shall be supported by sufficient justification.

3. Each facility shall have available adequate and appropriate classroom space, a library, and instructional materials and supplies to meet the educational needs of the children.

**8 VAC 20-80-170. (Repealed.)**

**8 VAC 20-80-180. (Repealed.)**

**PART VI.**  
**COMPLIANCE WITH § 504 OF THE REHABILITATION ACT OF 1973, AS**  
**AMENDED.**

**8 VAC 20-80-190. Compliance with § 504 of the Rehabilitation Act of 1973, as amended.**

A. Each state-operated program providing educational services to persons of school age, the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton shall provide a free appropriate public education to each qualified person with a disability of school age and provide procedural safeguards in accordance with the Virginia Department of Education's 504 plan. *34 CFR §104.33 (b) (2)*

B. Local educational agencies may utilize the due process hearing system specified in 8 VAC 20-80-76 to resolve disputes regarding the identification, evaluation, or educational placement of qualified persons who have a disability. *34 CFR §104.36*

## Appendix A

Figure 1. Local school division caseload maximums as funded by the Virginia Appropriation Act.

Disability Category	Level II		Level I
	With Paraprofessional 100% of the time	Without Paraprofessional 100% of the time	
Autism	8	6	24
Deaf-blindness	8	6	
Developmental Delay: age 5 - 8	10	8	
Developmental Delay: age 2 – 5	8 Center Based 10 Combined	12 Home Based and/or Itinerant	
Emotional Disturbance	10	8	24
Hearing Impairment/Deaf	10	8	24
Learning Disability	10	8	24
Mental Retardation	10	8	24
Multiple Disabilities	8	6	
Orthopedic Impairment	10	8	24
Other Health Impairment	10	8	24
Severe Disabilities	8	6	
Speech or Language Impairment			68 (itinerant)
Traumatic Brain Injury	May be placed in any program, according to the IEP.		
Combined group of students needing Level I services with students needing Level II services.	20 Points (see Figure 2)		

**Figure 2. Values for students receiving Level I services when combined with students receiving Level II services.**

Disability Category	Level II Values		Level I Values
	<i>With paraprofessional 100% of the time</i>	<i>Without paraprofessional 100% of the time</i>	
Autism	2.5	3.3	1
Deaf-blindness	2.5	3.3	1
Developmental Delay: age 5 - 8	2.0	2.5	1
Emotional Disturbance	2.0	2.5	1
Hearing Impairment/Deaf	2.0	2.5	1
Learning Disability	2.0	2.5	1
Mental Retardation	2.0	2.5	1
Multiple Disabilities	2.5	3.3	1
Orthopedic Impairment	2.0	2.5	1
Other Health Impairment	2.0	2.5	1
Severe Disabilities	2.0	2.5	1
Traumatic Brain Injury	2.0	2.5	1

**8 VAC 20-80-200. (Repealed.)**

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**INDEX**

Age of eligibility, definition..... 8 VAC 20-80-10, page 6  
    Free appropriate public education .....20-80-60 A, page 39

Age of majority, definition..... 20-80-10, page 6  
    Appointment of educational representative.....20-80-72 D, page 70  
    IEP requirements.....20-80-62 F1, page 48  
    Local educational agency responsibilities.....20-80-72 B; 20-80-62 F11, page 68; 48  
    Transfer of rights at age of majority.....20-80-72, page 68

Alternate assessment, Definition.....20-80-10, page 6  
    Individualized education program requirements .....20-80-62 F, page 47  
    Virginia Department of Education requirements.....20-80-30 14, page 20

Alternative staffing plan  
    Availability to parents and teachers.....20-80-45 D, page 26  
    General Requirements.....20-80-45 D, page 26

Assistive technology device and service, definition.....20-80-10, page 6  
    Free appropriate public education requirements.....20-80-60 E, page 40  
    Individualized education program requirements.....20-80-62 E2f, page 46

At no cost, definition.....20-80-10, page 6

Attorneys' fees .....20-80-76 N; 20-80-155, page 79; 94

Audiology, definition.....20-80-10, page 6  
    Reflected in the definition of related services.....20-80-10, page 14

Autism, definition.....20-80-10, page 7  
    Caseload requirements.....20-80-45 A; Appendix A, page 24; 100  
    Teacher assignment.....20-80-45 A; Figure A & B, page 24; 27

Behavioral intervention plan, definition.....20-80-10, page 7  
    Discipline requirements.....20-80-68 C2d; 20-80-68 C2e, page 56; 57

Blind, definition.....20-80-10, page 17  
    Caseload requirements.....20-80-45 A; Appendix A, page 24; 100  
    Teacher assignment requirements.....20-80-45 A; Figure A & B, page 24; 27

Business day see Day.....20-80-10, page 8

Calendar day see Day.....20-80-10, page 8

Caseload, definition.....20-80-10, page 7  
    Staffing requirements.....20-80-45; Appendix A, page 24; 100

Change in identification, definition.....20-80-10, page 7

Change in placement, definition.....20-80-10, page 7

Change in placement, discipline, Definition.....20-80-10, page 7

Chapter, definition.....20-80-10, page 7

Charter schools, definition.....20-80-10, page 8  
    Free appropriate public education requirements.....20-80-60 J, page 42  
    Local school division responsibility.....20-80-40-B 4, page 23  
    Virginia Department of Education requirements.....20-80-30-l g, page 18

Child with a disability, definition.....20-80-10, page 8

Child find, .....	20-80-50 A, page 28
Infants and toddlers.....	20-80-50 A2, page 29
Private school children.....	20-80-50 A3, page 29
Public awareness.....	20-80-50 B, page 29
Screening.....	20-80-10, page 15
Child study committee, definition.....	20-80-10, page 8
Use during referral for evaluation.....	20-80-52 A, page 30
Use to review screening.....	20-80-50 C3, page 29
Complaint, definition.....	20-80-10, page 8
Appeal.....	20-80-78 G, page 84
Dissemination of complaint procedures.....	20-80-78 A, page 82
Filing a complaint.....	20-80-78 B, page 82
Virginia Department of Education responsibilities.....	20-80-307b; 20-80-78C, page 18; 82
Comprehensive Services Act, definition.....	20-80-10, page 8
Funding.....	20-80-110 E, page 90
IEP.....	20-80-62 A2, page 42
Local school division responsibilities.....	20-80-40 B9, page 23
Parent involvement on team.....	20-80-70 A1C, page 62
Private placement by Comprehensive Services Act team.....	20-80-66 A, page 51
Virginia Department of Education's responsibilities.....	20-80-30-2, page 18
Confidentiality of records	
Access to records.....	20-80-70 G1, page 66
Amendment of records.....	20-80-70 G6, page 67
Destruction of information.....	20-80-70 G12, page 68
Fees for c opies.....	20-80-70 G5, page66
General Information.....	20-80-70, page 61
Virginia Department of Education requirements.....	20-80-30 25, page 21
Consensus	
Eligibility team.....	20-80-56 C4, C6a, page 36
IEP team.....	20-80-62 E6, page 46
Consent, Definition.....	20-80-10, page 8
For change in identification .....	20-80-70 E1, page 64
For evaluation .....	20-80-54 C4; 20-80-54 G; 20-80-70 E1a, page 32; 35, 64
For individual education programs.....	20-80-70 E1C, page 64
For release of educational record.....	20-80-70 G10, page 67
For use of insurance.....	20-80-70 F1b; 20-80-152 B2, page 65; 94
Revocation of consent.....	20-80-70 E 3, page 65
Termination .....	20-80-58 B, page 39
Correctional facility, definition.....	20-80-10, page 8
IEP requirements .....	20-80-62 H, page 48
Counseling services, definition.....	20-80-10, page 8
Parent counseling and training, definition.....	20-80-10, page 13
Day, definition.....	20-80-10, page 8

Business day definition.....	20-80-10, page 7
Calendar day definition.....	20-80-10, page 7
Length of school day.....	20-80-60 K, page 42
Preschool day.....	20-80-45 B1, page 25
School day definition.....	20-80-10, page 15
Deafness, definition.....	20-80-10, page 8
Caseload requirements.....	20-80-45 A; Appendix A, page 24; 100
Teacher assignment requirements.....	20-80-45 A, Figures A & B, page 24; 27
Deaf-blindness, definition.....	8 VAC 20-80-10, page 9
Caseload requirement.....	20-80-45; Appendix A, page 24; 100
Teacher assignment requirements.....	20-80-45, Figures A & B, page 24; 27
Developmental delay, definition.....	20-80-10, page 9
Caseload requirement.....	20-80-45; Appendix A, page 24; 100
Eligibility for special education with developmental delay.....	20-80-56 F, page 37
Teacher assignment.....	20-80-45, Figures A & B, page 24; 27
Direct services, definition.....	20-80-10, page 9
Requirements of the state educational agency.....	20-80-30 23, page 21
Discipline	
Authority of hearing officer.....	20-80-68 C4, page 58
Behavioral intervention plan	
Definition.....	20-80-10, page 7
Requirements.....	20-80-68 C2d; 20-80-68 C2e, page 57; 54
Expedited due process hearing.....	20-80-68-C 9; 20-80-76 K13; 20-80-76 M, page 61; 78, 79
Functional behavioral assessment	
Definition.....	20-80-10, page 10
Requirements.....	20-80-68 C2d, page 57
Illegal drugs/controlled substance.....	20-80-68 C2b, page 56
Interim alternative educational setting.....	20-80-68 C2c, page 57
Long-term removal.....	20-80-68 C, page 56
Manifestation determination review	
Definition.....	20-80-10, page 11
Requirements.....	20-80-68 C5, page 58
Pattern.....	20-80-68 B2, page 56
Placement during appeals.....	20-80-68 C7, page 59
Protection for students not eligible for special education and related services.....	20-80-68 C8, page 60
Referral to law enforcement and judicial authorities.....	20-80-68 10, page 61
Short-term removal.....	20-80-68 B, page 56
Weapon.....	20-80-68 C; b(2)(c), page 56; 57
Dispute	
Between school divisions for student placed outside of the division for non-educational reasons.....	20-80-40 B10b, page 24
Between educational agency and non-educational agency regarding provision or payment of special education and related services.....	20-80-90 D, page 87
Due process.....	20-80-68, page 56

Mediation.....	20-80-74, page 70
Due Process Hearing	
Definition.....	20-80-10, page 9
Appeal.....	20-80-76 O, page 79
Expedited due process hearing.....	20-80-68 C9; 20-80-76 K13, page 61; 78
Hearing officer's authority and responsibilities.....	20-80-76 J & K, page 75, 77
Local educational agency's responsibilities.....	20-80-76 I, page 74
Parent's responsibilities.....	20-80-76 H, page 74
Process for requesting.....	20-80-76 C, page 72
Timelines.....	20-80-76 L & M, page 79
Virginia Department of Education's responsibilities.....	20-80-76 P, page 80
Education record	
Definition.....	20-80-10, page 9
Confidentiality requirements.....	20-80-70 G, page 66
Eligibility	
By disability.....	20-80-56 H, page 38
Developmental delay, eligibility criteria.....	20-80-57 F, page 37
Group that determines eligibility.....	20-80-56 B, page 35
Information to teachers of not eligible.....	20-80-56 I, page 38
Prior enrollment.....	20-80-56 K, page 38
Procedures.....	20-80-56 C, page 36
Related services, eligibility for.....	20-80-56 D, page 37
Report.....	20-80-56 C 5, C6, C 7, page 36
Specific learning disabilities.....	20-80-56 G, page 37
Termination.....	20-80-58, page 39
Timeline.....	20-80-56 A, page 35
Two year olds, eligibility criteria.....	20-80-56 E, page 37
Emotional disturbance, definition.....	20-80-10, page 9
Caseload requirement.....	20-80-45 A; Appendix A, page 24; 100
Teacher assignment.....	20-80-45 A, Figures A & B, page 24; 27
Evaluation, definition.....	20-80-10, page 9
Consent.....	20-80-54 G, page 35
Determination of needed data.....	20-80-54 D, page 32
Non-standardized.....	20-80-54 E 7, page 33
Notice.....	20-80-54 G, page 35
Reevaluation.....	20-80-54 F, page 34
Referral.....	20-80-52, page 30
Report, copy to parents.....	20-80-54 E16, page 34
Team.....	20-80-54 D1, page 32
Test requirements.....	20-80-54 E, page 33
Timelines.....	20-80-54 H, page 35
Extended school year services, definition.....	20-80-10, page 9

Free appropriate public education requirements.....	20-80-60 I, page 41
Extracurricular activities see nonacademic services and extracurricular services, definition.....	20-80-10, page 12
Free appropriate public education .....	20-80-60 G, page 41
Individualized education program requirements.....	20-80-62 F3b, page 47
Free appropriate public education, definition.....	20-80-10, page 10
Elements.....	20-80-60, page 39
Functional behavioral assessment, definition.....	20-80-10, page 10
Requirements.....	20-80-68 C2d, page 57
Funding	
Appeal of decision regarding funding.....	20-80-150B, page 93
Comprehensive service Act fund.....	20-80-110E, page 90
Eligibility for.....	20-80-100, page 89
Federal funds.....	20-80-120, page 90
Funding, withholding and disbursement of funds.....	20-80-140, page 92
Insurance.....	20-80-152, page 93
State funds for local school decisions.....	20-80-110, page 89
State funds for state-operated programs and Virginia schools for the deaf, and the multi disabled.....	20-80-130, page 91
General curriculum, definition.....	20-80-10, page 10
IEP statement.....	20-80-62 F 1f3b, page 46
Review of IEP to address lack of progress in.....	20-80-62 B6, page 42
Gross and fine motor screening .....	20-80-50 C1C, page 29
Hearing aids, proper functioning of.....	20-80-60 D, page 40
Hearing impairment, d Definition.....	20-80-10, page 10
Caseload requirements.....	20-80-45 A; Appendix A page 24; 100
Teacher assignment.....	20-80-45 A, Figures A & B, page 24; 27
Hearing officer, definition.....	20-80-10, page 10
Authority and responsibilities.....	20-80-76 J & K, page 75, 77
Hearing screening	
Requirement for all students and new students .....	20-80-50 C1b, page 29
Component of evaluation.....	20-80-54 E 15 a, 15 b, page 34
Home instruction, definition.....	20-80-10, page 10
Child find.....	20-80-50 A1b, page 28
Services.....	20-80-66 C, page 52
Home tutoring, definition.....	20-80-10, page 10
Child find.....	20-80-50 A1b, page 28
Services.....	20-80-66 C, page 52
Home-based instruction, definition.....	20-80-10, page 10
Service.....	20-80-66 C, page 53
Staffing requirements for preschool- aged children.....	Appendix A, page 100
Homebound instruction, definition.....	20-80-10, page 10
Homeless children with disability	

Local education agency responsibility.....	20-80-40 B2, page 23
House arrest, children with disability on	
Local school division responsibility.....	20-80-40 B7, page 23
Implementation plan, definition.....	20-80-10, page 10
Requirements.....	20-80-76 I 16, page 75
Independent educational evaluation, definition.....	20-80-10, page 10
Criteria.....	20-80-70 B2e, page 63
Parental right.....	20-80-70 B2, page 62
Requesting.....	20-80-70 B2d, page 62
Individualized education program, definition.....	20-80-10, page 10
Contents.....	20-80-62 F, page 46
Copy.....	20-80-62 D9, page 45
List of considerations to be made by IEP team.....	20-80-62 D8, page 45
Notice.....	20-80-62D2, page 44
Parent participation.....	20-80-62D, page 44
Preschool aged students.....	20-80-62 F8, page 48
Recording, audio.....	20-80-62D6, page 45
Recording video.....	20-80-62D7, page 45
Review.....	20-80-62B6, page 42
Special considerations.....	20-80-62 E1, E2 page 45, 46
Supplementary aids and services.....	20-80-62 F3, page 47
Team.....	20-80-62 C, page 43
Timelines.....	20-80-62 B1, B5, page 42
Transition, notice requirements.....	20-80-62 D2b, page 44
Transition participants.....	20-80-62 C2, page 44
Transition, needed services planning.....	20-80-62 F10, page 48
Transition service needs planning.....	20-80-62 F9, page 48
Individualized family service plan, definition.....	20-80-10, page 11
Infant and toddler with a disability, definition.....	20-80-10, page 11
Insurance	
Parental consent requirement.....	20-80-70 F1b; 20-80-152 B2, page 65; 94
Private insurance.....	20-80-152 B, page 94
Public insurance.....	20-80-152 A, page 93
Interpreting, definition.....	20-80-10, page 11
Qualification requirements.....	20-80-45 E1, E2, page 27, 28
Requirements for receipt of waiver of requirements.....	20-80-45 E3, page 28
Jails, regional/local	
Exceptions to individualized education program.....	20-80-62 H, page 48
Funding.....	20-80-110 D, page 90
Interagency agreement.....	20-80-90 H2, page 88
Local school division responsibility.....	20-80-40 B6; 20-80-90 H1, page 23; 88
Staffing requirements.....	20-80-45 C, page 26
Least restrictive environment, definition.....	20-80-10, page 11

Requirements.....	20-80-64 A, page 49
Length of school day	
Free appropriate public education requirements.....	20-80-60 K, page 42
Preschool students.....	20-80-45 B1, page 25
Level I services, definition.....	20-80-10, page 11
Staffing requirements.....	20-80-45 A; Appendix A, page 24; 100
Level II services, definition.....	20-80-10, page 11
Staffing requirements.....	20-80-45 A; Appendix A, page 24, 100
Local advisory committee	
Membership.....	20-80-90 E, E1, page 87
Roles and responsibilities.....	20-80-90 E2, page 87
Local educational agency, definition.....	20-80-10, page 11
Administrative and government.....	20-80-90, page 86
Responsibility.....	20-80-40, page 23
Manifestation determination review, definition.....	20-80-10, page 11
Requirements.....	20-80-68 C5, page 58
Mediation	
Options to resolve disputes.....	20-80-74 A, page 70
Virginia Department of Education process.....	20-80-74 B, 74 E, page 70, 71
Medical services .....	20-80-10, page 11
Mental retardation, definition.....	20-80-10, page 12
Caseload requirements.....	20-80-45 A; Appendix A, page 24; 100
Teacher assignment requirements.....	20-80-45 A; Figures A & B, page 24; 27
Migrant children with disability	
Local school division responsibility.....	20-80-40 B1, page 23
Multiple disabilities, definition.....	20-80-10, page 12
Caseload requirements.....	20-80-45 A; Appendix A, page 24; 100
Teacher assignment requirements.....	20-80-45 A; Figures A & B, page 24; 27
Native language, definition.....	20-80-10, page 12
Requirement for notice in native language, IEP.....	20-80-62 D5, page 45
Requirement for notice in native language.....	20-80-70 C4, page 63
Nonacademic services, definition.....	20-80-10, page 12
Free appropriate public education requirements.....	20-80-60 G, page 41
IEP requirements.....	20-80-62 F3b, page 47
Notice, definition.....	20-80-10, page 12
IEP Requirements.....	20-80-62 D2, page 44
Prior notice requirements.....	20-80-70 C, page 63
Procedural safeguards notice.....	20-80-70 D, page 64
Screening requirements.....	20-80-50 C2, page 30
Occupation therapy, definition.....	20-80-10, page 12
Reflected in definition of related services .....	20-80-10, page 14
Orientation and mobility services, definition.....	20-80-10, page 12
Reflected in definition of related services .....	20-80-10, page 14

Orthopedic impairment, definition..... 20-80-10, page 12  
    Caseload requirements.....20-80-45 A, Appendix A, page 24; 100  
        Teacher assignment requirements.....20-80-45 A, Figures 1 & 2, page 24; 27

Other health impairment, definition..... 20-80-10, page 12  
    Caseload requirements.....20-80-45 A, Appendix A, page 24; 100

Paraprofessional, definition..... 20-80-10, page 13  
    Caseload requirements with paraprofessionals.....Appendix A, page 100

Parent , definition.....20-80-10, page 13  
    Participation in IEP.....20-80-62 D; 20-80-62 C, page 44; 43  
    Surrogate parent.....20-80-80, page 84

Parent counseling and training .....20-80-10, page 13

Participating agency, definition..... 20-80-10, page 13  
    Requirement with respect to transition.....20-80-62 G, page 48

Personnel development  
    Local educational agency requirement.....20-80-90 C, page 87  
    Virginia Department of Education requirements.....20-80-30 13, page 29

Physical education, definition..... 20-80-10, page 13  
    Free appropriate public education requirements.....20-80-60 H, page 41

Physical therapy, definition..... 20-80-10, page 13  
    Reflected in the definition of related services.....20-80-10, page 14

Placement  
    Continuum of alternative placements.....20-80-64 B, page 49  
    Initial definition..... 20-80-10, page 11  
    Least restrictive environment requirements.....20-80-64, page 49  
    Parent participation on team.....20-80-70 A1 C, page 62  
    Requirements. ....20-80-64 C, page 50  
    Virginia schools for the deaf, blind and multi-disabled.....20-80-65, page 50

Plans, policies and procedures for special education and related services  
    Approval by Virginia Board of Education.....20-80-30 3, page 18  
    Local education agency development and revision.....20-80-90 B, page 86  
    Power of attorney, for appointment of educational representative.....20-80-72 C2, page 69

Private Schools, definition.....20-80-10, page 13  
    Child find.....20-80-66 C, page 52  
    Compliance.....20-80-30 4, page 18  
    Private school placement by local school division or comprehensive services act  
        team.....20-80-66 A, page 51  
    Private school placement when free appropriate public education is at issue.....20-80-66 B, page 52  
    Private school placement when free appropriate public education is not at issue.....20-80-66 D, page 53

Procedural safeguards  
    Independent education evaluation.....20-80-70 B, page 62  
    Insurance.....20-80-70 F, page 65  
    Opportunity to examine records.....20-80-70 A, page 61

Parental consent.....	20-80-70 E, page 64
Prior notice.....	20-80-70 C, page 63
Procedural safeguards notice.....	20-80-70 D, page 64
Program, definition .....	20-80-10, page 13
Psychological services, definition.....	20-80-10, page 14
Reflected in the definition of related services .....	20-80-10, page 14
Public notice, definition .....	20-80-10, page 14
Qualified person who has a disability, definition.....	20-80-10, page 14
Interpreting requirements.....	20-80-45 E1, E2, page 27, 28
Requirements in section 504 of the Rehabilitation Act of 1973.....	20-80-190, page 99
Qualified personnel, definition.....	20-80-10, page 14
Teacher assignment.....	20-80-45 A Figures A & B, page 24; 27
Recording of individualized education program meeting	
Audio.....	20-80-62, page 42
Video.....	20-80-62 D7, page 45
Recreation, definition.....	20-80-10, page 14
Reflected in the definition of related services.....	20-80-10, page 14
Reevaluation, definition.....	20-80-10, page 14
Requirements.....	20-80-54 F, page 34
Timelines.....	20-80-54 H2, page 35
Regional special education programs	
Administration and governance.....	20-80-90 F, page 87
Related services, definition.....	20-80-10, page 14
Eligibility.....	20-80-56 D, page 37
Termination.....	20-80-58, page 39
School day see Day	
Length of – see length of school day	
School health services, definition.....	20-80-10, page 15
Reflected in the definition of related services .....	20-80-10, page 14
Screening, definition.....	20-80-10, page 15
Child find requirements.....	20-80-50 C, page 29
Hearing screening requirements during initial evaluation.....	20-80-54 E 15a, page 34
Section 504, definition.....	20-80-10, page 15
Requirements for state-operated programs, Virginia School for the Deaf, and the Blind at Staunton, and Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.....	20-80-190 A, page 99
Use of due process hearing system by local education agencies.....	20-80-190 B, page 99
Services plan	
For private school children with disabilities.....	20-80-66 D4, D5, page 53, 54
Severe disability, definition.....	20-80-10, page 15
Caseload requirements.....	20-80-45 A, Appendix A, page 24; 100
Teacher assignments.....	20-80-45 A, Figures A & B, page 24; 27
Social work services in schools, definition.....	20-80-10, page 15
Reflected in the definition of related services.....	20-80-10, page 14

Special education, definition.....	20-80-10, page 15
Specially -designed instruction, definition.....	20-80-10, page 15
Specific learning disability, definition.....	20-80-10, page 15
Caseload requirements.....	20-80-45 A, Appendix A, page 24; 100
Eligibility.....	20-80-56 G, page 37
Speech or language impairment, definition.....	20-80-10, page 16
Caseload requirements.....	20-80-45 A, Appendix A, page 24; 100
Speech-language pathology services, definition.....	20-80-10, page 16
As special education (“speech only”) – see definition of special education	
Reflected in the definition of related services .....	20-80-10, page 14
Speech-language screening .....	20-80-50 C1a, page 29
State assessment program, definition.....	20-80-10, page 16
Individual education program determination of student participation in.....	20-80-62 F5, page 47
State educational agency, definition.....	20-80-10, page 16
State-operated programs, definition.....	20-80-10, page 16
Annual program plan.....	20-80-160 B, page 96
Facility requirements.....	20-80-160 C, page 97
Funding.....	20-80-130, page 91
Staffing requirements.....	20-80-160 C, page 97
State special education advisory committee	
Duties.....	20-80-30 10b, page 19
Membership.....	20-80-30 10a, page 19
Supplementary aids and services, definition.....	20-80-10, page 16
Component of IEP.....	20-80-62 F3, page 47
Surrogate parent, definition.....	20-80-10, page 16
Appointment.....	20-80-80 B, page 84
Identification and recruitment.....	20-80-80 C, page 85
Qualifications.....	20-80-80 D, page 86
Rights.....	20-80-80 E, page 86
Role.....	20-80-80 A, page 84
Timelines	
Child study committee, if referred to special education.....	20-80-52 A2, page 30
Child study committee, if reviewing requirements, for referral to special education.....	20-80-52 B2, page 31
Complaints	
For LEA to correct violations.....	20-80-78 D, page 84
For resolution.....	20-80-78 C4 b(1) & b(2), page 83
Process.....	20-80-78 C1, page 82
To address actions that occurred in the past.....	20-80-78 B4, page 82
Discipline	
Develop behavioral assessment plan.....	20-80-68 C2d, page 57
Expedited due process hearing.....	20-80-76 M, page 79
Manifestation determination review.....	20-80-68- C5b, page 58
Services during disciplinary removal.....	0-80-68 C3, page 57

Due process	
Appointment of hearing officers.....	20-80-76 C, D1, page 72
Expedited due process hearing.....	20-80-76 M, page 79
Hearing officer responsibilities.....	20-80-76 K, page 77
Non-expedited due process hearing.....	20-80-76 L, page 79
Virginia Department of Education review.....	20-80-76 Q2, page 81
Eligibility.....	20-80-56 A, page 35
Evaluation.....	20-80-54 H, page 35
Individual educational program.....	20-80-62 B1, B5, page 42
Reevaluation.....	20-80-54 H2, page 35
Referral.....	20-80-52 A2, B2, page 30, 31
.....	20-80-50 C1g, page 30
Transfer of rights at age of majority (certification of adult student's incompetence).....	20-80-72 C3d, page 69
Screening.....	20-80-50 C, page 29
Transfer of rights at age of majority ... See age of majority	
Transfer Student	
In-state.....	20-80-56 K1, page 38
Out-of-state.....	20-80-56 K2, page 38
Transition Services	
From Part C, definition.....	20-80-10, page 16
IEP requirements.....	20-80-62-F9, F10, page 48
From Part C .....	20-80-90 G, page 88
Transportation, definition.....	20-80-10, page 16
Free appropriate public education requirements.....	20-80-60 F, page 40
Reflected in the definition of related services .....	20-80-10, page 14
Virginia School for the Deaf and Blind at Staunton and Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.....	20-80-60 F; 20-80-65 C3, page 40; 51
Traumatic brain injury, definition.....	20-80-10, page 17
Travel training, definition.....	20-80-10, page 17
Reflected in the definition of related service .....	20-80-10, page 14
Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton, definition .....	20-80-10, page 17
Compliance.....	20-80-30-9, page 19
Contract with placing local school division.....	20-80-65 C, page 50
Funding.....	20-80-130, page 91
Placements.....	20-80-65 A, page 50
Staffing requirements.....	20-80-160 C, page 97
Transportation.....	20-80-60 F, 20-80-65 C 3f, page 40, 51
Virginia Department of Education Responsibilities.....	20-80-30, page 18
Visual Impairment, including blindness, definition.....	20-80-10, page 17
Caseload requirements.....	20-80-45; Appendix A, page 24; 100
Teacher assignment and requirements.....	20-80-45 A, Figures A & B, page 24; 27
Vision Screening .....	20-80-50 C1b, page 29

Vocational Education , definition..... 20-80-10, page 17

    Consideration of career-technical courses for students pursuing modified standard diploma .....20-80-62F9, page 48